



THE  
**Cabinet Lawyer ;**  
 OR,  
 POPULAR DIGEST  
 OF THE  
**LAWS OF ENGLAND,**

ESPECIALLY THOSE RELATIVE TO

The Clergy  
 Parish Officers  
 Masters and Workmen  
 Lawyers and Attorneys  
 Landlords and Tenants  
 Pawnbrokers and Auctioneers  
 Innkeepers and Carriers  
 Dissenters and Roman Catholics  
 Sportsmen  
 Army and Navy  
 Millers and Bakers  
 Physicians and Surgeons  
 Coachmen and Guards  
 Patentees

Authors and Publishers  
 Bankruptcy and Insolvency  
 Jurors and Witnesses  
 Libel and Slander  
 Contracts, Sales, and Promises  
 Bills of Exchange  
 Wills and Testaments  
 Friendly Societies and Saving  
 Banks  
 Mortgages and Liens  
 Principal and Factor  
 Joint-Stock Companies  
 Laws of Insurance  
 Legal Process, &c.

WITH

**THE CRIMINAL LAW OF ENGLAND ;**

ALSO, A

**Dictionary of Law Terms,**

MAXIMS, ACTS OF PARLIAMENT, AND JUDICIAL  
 ANTIQUITIES ;

CORRECT TABLES OF ASSESSED TAXES, STAMP DUTIES,  
 EXCISE LICENSES, AND POST-HORSE DUTIES ;

POST-OFFICE REGULATIONS, RATES OF PORTERAGE AND  
 HACKNEY-COACHES, TURNPIKE LAWS, CORN LAWS,  
 AND PRISON REGULATIONS.

“ I wish every Man knew as much Law as would enable him to keep  
 himself out of it.”---*Lord Bacon.*

**FOURTH EDITION,**

*With an Appendix of the Acts of 9 Geo. IV. and Digest of Law Cases from  
 the Commencement of Michaelmas Term, A.D. 1827.*

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# ADVERTISEMENT

## TO THE FOURTH EDITION.

THIS Edition is much enlarged and improved by an APPENDIX, including a careful abstract of statutes passed in the last Session of Parliament, and an alphabetical digest of popular Law Cases, occurring in the interval from the publication of the third edition to the present period.

The statutes abridged are of great public interest, effecting material changes in the Criminal Code, and in the laws regulating the importation of Corn—the destruction of Game—the Excise—Custom Duties—Licensing of Publicans—Lunatic Asylums—Bankers' Notes—Saving Banks—Protestant Dissenters—Parliamentary Elections, &c. No notice has been taken of merely local and private Acts, nor of such annual acts as are simply a re-enactment every session of the provisions of former statutes. A few notes and observations have been added, and a reference given to such parts of *The Cabinet Lawyer* as are affected by the new regulations. In condensing the acts, regard has been

## ADVERTISEMENT.

had to their relative interest and importance, and the difficulty of rendering their true meaning and import. The “march of intellect” is perceptible in the drawing up of acts of parliament, and many of them exhibit visible signs of improvement by an abatement in the usual mass of surplusage and obscurity.

The digest of important Law Cases, from Michaelmas, A.D. 1827, has been prepared on the same principle as the Acts; namely, by being chiefly restricted to a notice of such legal dicta as are of popular concernment, and the omission of that which can only be essential to the conveyancer, special pleader, or actual practitioner.

*October 1st, 1828.*

J. W.

# PREFACE

## TO THE THIRD EDITION.

BESIDE an attentive revision of the present Edition, material changes have been introduced, in consequence of the important Acts of the last Session of parliament.

The sixth Part, on "Crimes and Misdemeanors," has been almost recomposed, especially the chapters on Arson, Burglary, Larceny, Malicious Mischief, and the Game Laws. In addition to the alterations occasioned by the New Criminal Statutes of Mr. Peel, those relative to Bills of Exchange—Landlords and Tenants—Arrest of Debtors—Parliamentary Elections—Spring-Guns—Corn Laws—Remedies against the Hundred—Excise, Malt, and Stamp Duties—Post-Office Rates—Church-Building Acts—Benefit of Clergy—Sale of Church Preferment—Constables, Carriers, and Factors, have been all carefully noticed, digested, and incorporated into the Work under the proper head or chapter. Several new articles have been inserted in the DICTIONARY; others have been corrected or enlarged.

The decisions in the Courts of Law from the publication of the Second Edition have been included, and the whole brought down to the end of the Summer Assizes of the present year.

J. W.

*September 29th, 1827.*

# PREFACE

## TO THE SECOND EDITION.

ENCOURAGED by the very flattering reception of "*The Cabinet Lawyer*," the Editor has spared no pains in preparing the 'Second Edition for the press. The Work throughout has been carefully revised with the best authorities, and corrections or additions made in almost every part. A new chapter has been added on the Rights of Patentees. The chapters on Juries, Landlords and Tenants, Auctioneers, Wills and Testaments, Joint-Stock Companies, Contracts, and Bankruptcy, have been materially improved, both in matter and arrangement. The law on Settlement, Arrest, Bills of Exchange, Parliamentary Elections, Mortmain, Literary Property, and Libel, has been more fully and precisely stated. In the DICTIONARY, several new articles, as on Hackney-Coaches and Stoppage in Transitu, have been incorporated, and others corrected or enlarged. The legal authorities on all doubtful points have been carefully inserted; the references to acts of parliament corrected, and new ones introduced, which had been omitted in the First Edition from a desire not to give too professional an air to a Work chiefly intended for popular use and reference. The new decisions in the Courts of Law from the publication of the First Edition have been included, and the whole brought down to the end of Hilary Term of the present year.

February 19, 1827.

J. W.

# PREFACE

## TO THE FIRST EDITION.

THOSE who have attended to the details of administrative justice cannot fail to have remarked that the great mass of litigation results not more from the uncertainty of the law, than the absence of that legal information which ought to be within the reach and comprehension of every member of the community. Of the questions brought forward for magisterial adjudication, a large proportion are referable to clear and settled determinations of law, with which the parties themselves ought to have been apprised, without the delay, expense, and anxiety inseparable from judicial process.

A principal object of the present undertaking has been to lessen the occasions for an appeal to the Courts of Law; and, secondly, to render accessible to unprofessional readers a knowledge of the institutions by which individual rights, persons, and properties are secured.

As the primary design was a Popular Digest of the Laws of England, my first object has been compression and simplicity; the former I endeavoured to attain by strictly avoiding every thing extraneous to a distinct elucidation of the immediate question; the latter, by divesting the subject of technical obscurity, combined with an arrangement which I think will be found as natural and convenient as the English laws will admit.

The work is divided into six Parts, and each part is subdivided into chapters and sections.

The *first* Part comprises the chief points in the origin and jurisdiction of the laws of England, and in the institutions and government from which they have emanated.

*Next* follows the Administration of Justice, including a brief account of the courts of law, the mode of civil and criminal procedure, the constitution of juries, and the nature of evidence.

The *third* Part is entitled Persons and Classes, comprising the laws which exclusively refer to particular descriptions of individuals; as the Clergy, Parish Officers, Innkeepers, Carriers, Pawnbrokers, Roman Catholics, Executors, Working Classes, Trustees, Authors and Publishers, Landlords and Tenants, Principal and Factor.

Having stated the laws which affect persons in their individual and social relations, we come to those which affect their possessions; this forms the *fourth* Part, embracing the incidents connected with the possession and conveyance of property, under the heads of Wills and Testaments, Tithes, Contracts, Bills of Exchange, Bankruptcy, Assignment, Mortgage, Liens, Insurance, Insolvency, Game-laws, &c.

*Next* follows the consideration of Civil Injuries, or those minor offences, as Libel, Seduction, and Slander, which infringe the rights of individuals, but do not directly endanger the peace and well-being of the community.

The *sixth* and concluding Part refers to Crimes and Misdemeanors, being a digest of the criminal law of England, and of the consequences and punishment of public offences. Great and salutary changes have been recently introduced into this department of the judicial system; among others, the speedier trial of misdemeanors has been facilitated, and the severity in their punishment augmented; the number of capital offences has been diminished, and milder and more reformatory modes of punishment substituted; punishments, unsuited to the feelings of the age, as that of the pillory, and the burning, or whipping of females, have been abolished, and parts of others, as the embowelling of traitors, and the ignominious burial of suicides on the highway, rescinded; corruption of blood has been limited to treason or murder; the barbarous exhibition of appeals in treason, murder, and felony has been suppressed, and the trial by battle in civil suits; lastly, provision has been made for defraying the expenses of prosecution, both in cases of misdemeanor and felony, and the peremptory estreating of recognizances, which often occasioned hardship to individuals, has been placed under suitable restraint. These ameliorations in the Penal Code have all been noticed in their proper places, so as correctly to detail the present state of criminal administration.

To the conclusion is added a Dictionary of Law Terms, Acts of Parliament, and Judicial Matters, which could not be properly incorporated into the body of the work, yet it was necessary to include them to comprise an entire Digest of the Laws of England. In this department, too, is condensed a

great variety of recent statutes, a knowledge of which is more or less essential to every person ; especially the acts relative to the Post-Office, Assessed Taxes, Turnpikes, Stamps, Excise, Navigation and Commerce, Marriages, Bread, and other subjects, correct information on which can hardly be any where procured in a collective form, and never without considerable cost and inconvenience.

The public is so accustomed to bulky works on law that a doubt may naturally arise of my ability adequately to treat the various subjects of the present volume in so small a compass. On this point I will endeavour to satisfy the reader. Of the *mechanical art* employed a glance at the smallness of our type, and the closeness of our pages will suffice ; of the *intellectual craft* a little more explanation may be requisite.

It has been often remarked into how small a compass human knowledge might be compressed, by confining it to a simple enunciation of fact and inference : it occurred to me, this principle might be applied, with peculiar advantage, to a digest of the English laws, and it is by rigorously adhering to it, I have been enabled to accomplish the present undertaking. My aim, throughout, has been to concentrate, in an aphoristic form, *facts* and *legal points* only, exhibit them in simple language, under such arrangement and classification, as would afford the utmost facility for turning to and obtaining all the information necessary to the immediate object of research.

I will not conceal the design occurred to me from remarking the defects of the popular treatises on law already extant, and a conviction (perhaps a vain one !) that I could produce something better. The publications bearing any analogy to the present are chiefly abridgements from Sir Wm. Blackstone, which, from alterations in the Statute Book and the accumulating decisions of the Courts, have been rendered comparatively useless. It is true, attempts have been made to supply their defects, by publishing new editions, consisting, for the most part, of one or two additional sheets or notes, so that a great portion of the text retains laws and determinations that have long ceased to be English law.

Of the omissions in works of this description one instance may suffice. The law of copyright, not only from the pecuniary value of literary productions, but the number of persons interested therein, has become of the utmost importance ; yet, in two publications of the nature alluded to there is not the slightest notice of the existence of this species of property, or of the laws by which it is protected.



Since the Peace, the Legislature has been sedulously occupied in revising the Statute Law ; much remains to be done, but a great deal has been accomplished. The late parliament, previous to its dissolution, had repealed, modified, or consolidated, upwards of 1000 statutes. The 3 Geo. IV. c. 41, repeals upwards of 200 statutes, or parts of statutes, relative to the export and import of merchandize, the commerce of aliens and denizens, the guaging of wine, and other mercantile regulations. The New Custom-Law consolidates 450 acts of parliament into one ; the Jury Act, 30 ; the Bankrupt Act, 20, and the law of last session for Improving the Administration of Criminal Justice, some 60 or 70. These changes have been carefully attended to, the old laws repealed have been remarked ; and when an act referred only to a particular class (as the Pilot Act), and, consequently, did not fall within the general nature of the publication, I have indicated the most recent law on the subject, for the convenience of those more especially interested therein. My labour in this department has been much facilitated by the elaborate notes of Mr. Chitty, in his edition of Blackstone, and also by Mr. Coleridge, and preceding editors of that great work.

In analysing a statute, I have not invariably followed the order of the statute itself ; the framers of acts of parliament do not always adopt the most lucid arrangement, and, consequently, instead of following them from section to section, I have fairly dissected the subject matter, embodying the scattered clauses in separate and distinct sections : this appeared to me the best method for the general reader, and its utility will be more particularly observable in my digest of the Bankrupt and Insolvent Laws.

The decisions of the Courts of Law, as well as the statutes, have been brought down to the period of publication, so as to exhibit a condensed and popular view of the civil, criminal, and constitutional law of England, as now administered.

Having thus endeavoured to give the reader an idea of the plan and execution of the work, I have only to solicit indulgence for errors, perhaps inseparable from undertakings of this nature. To those acquainted with the complex and confused state of the English laws, no apology will be requisite, either for sins of omission or commission. And, generally, when defects are discovered, it will be fair to bear in mind the novel plan of the publication, and the many points of superiority it possesses over others of similar character.

J. W.

*September 20th, 1826.*

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### A DICTIONARY OF LAW TERMS, MAXIMS, ACTS OF PARLIAMENT, AND JUDICIAL ANTIQUITIES .... 417

# THE **Cabinet Lawyer.**

## PART I.

### LAWS AND GOVERNMENT OF ENGLAND.

THE primary objects of law are the preservation of individuals, of property, and the institutions of society.

The origin of laws, the nature of the institutions from which they have emanated, and the relations subsisting between the Government and the People, naturally form the first objects of inquiry. These subjects will occupy the first division of the work, and be classed under the following heads :—

- I. *Origin and Jurisdiction of the Laws of England.*
- II. *Constitution and Government of England.*
- III. *Rights of the People.*

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#### CHAP. I.

#### *Origin and Jurisdiction of the Laws of England.*

THE laws of England are divided into the COMMON and the STATUTE law.

THE COMMON, or UNWRITTEN LAW, consists of those customs and observances which have not been formally created and recorded by the legislative power, but have acquired a binding force by immemorial usage and the strength of general accord and reception. It is by general custom, or common law, that proceedings

are guided in courts of justice; that the eldest son inherits from his father; that property may be purchased and transferred by writing; that a deed is void, if not sealed and delivered; that money lent upon bond is recoverable by action of debt; and that breaches of the peace are punishable by fine and imprisonment. All these are doctrines not prescribed by any written statute or ordinance, but depend on *immemorial usage*, or common law, for their support.

By *immemorial usage* is not meant a period so remote as to be beyond historical record; the bounds of legal memory are limited by the statute of Westminster, 3 Edward I. to the reign of Richard I.; and any custom which has prevailed from that time to the present without interruption, acquires the force of law.

The civil and canon laws, which govern the proceedings of the ecclesiastical, the admiralty, and the military courts, form branches of the unwritten, or common law.

The jurisdiction of the common law is limited to the territory of England, and does not include either Wales, Scotland, Ireland, or any other part of the empire. But an Act of Parliament, made by the legislature of the united kingdom of England, Scotland, and Ireland, may bind the whole.

The WRITTEN, OR STATUTE LAW consists of statutes, acts, or edicts, made by the king, with the consent of the two Houses of Parliament.

The oldest written law now extant, and printed in the statute-book, is *Magna Charta*; though doubtless there are many acts before that time, the records of which are lost, and the maxims of which have been gradually incorporated into the common law.

The interpretation of the statutes and the maxims of the common law are determinable by the judges, whose knowledge therein arises from study and experience; from the perusal of the statutes, records of pleas, books of reports, and the tractates of learned men. Where the common law and the statute differ, the common law gives place to the statute; and an old statute gives place to a new one, upon the general principle, that, when contradictory, posterior abrogate

prior laws. When a decision has once been made on any point, it is an invariable rule to determine it in the same way again, unless the precedent can be clearly proved erroneous; judges being sworn to decide not according to their private opinions, but according to the known laws and customs of the land.

Above the common and statute law are placed COURTS OF EQUITY, whose office is to detect latent frauds and concealments which the process of the ordinary courts cannot reach; to enforce such matters of trust and confidence as are binding in conscience, though not cognizable in a court of common jurisdiction; and to give a specific relief, more adapted to the circumstances of the case than can always be obtained by the rules and provisions of the positive law.

Such are the functions of the courts of equity; whose jurisdiction, however, is limited to cases of *property*; for the nature of our institutions will not permit that, in criminal matters, which involve the personal security of individuals, a power should be lodged in any judge to construe the laws otherwise than according to the letter and established authority.

## CHAP. II.

### *Constitution and Government of England.*

THE supreme power in England is divided into two branches—the legislative and executive; the former consists of the king, lords, and commons, in parliament assembled; the latter consists of the king only.

There is little doubt that parliament, or general councils, are coeval with the establishment of the kingdom. But the constitution of parliament, as it now stands, was more clearly defined in the year 1215, by Magna Charta, granted by King John; in which he promises to summon the clergy, nobility, and commons to meet at a certain place, with forty days' notice, to assess aids and scutages, when necessary. The constitution so promulgated has clearly subsisted from the year 1266, 49 Hen. III. there being still extant writs

of that date, to summon knights, citizens, and burgesses to parliament.

The parliament is summoned by the king's writ, or letter, issued out of Chancery, formerly *forty*, but now, since the union with Scotland, at least *fifty* days before it begins to sit. It is a branch of the royal prerogative, that no parliament can be convened by its own authority, or by the authority of any except the king alone. On the demise of the sovereign, if there be no parliament in being, the last revives, and shall continue for six months, unless sooner prorogued or dissolved by his successor. And, in case of the king's demise on or after the day of the assembling of a new parliament, such new parliament shall meet and sit, subject in like manner to the will of the successor. 37 Geo. III. 39 & 40 Geo. III. c. 14.

The king may issue his proclamation for the meeting of parliament in fourteen days from the date, notwithstanding a previous adjournment to a longer period.

The power of proroguing and dissolving, as well as summoning parliament together, is vested in the crown. When it is resolved that parliament shall meet and sit on the day to which it is prorogued, notice is given by proclamation. And the language of the proclamation itself usually varies, so as to indicate a determination that the session shall then actually commence, the words then and there to meet *for the despatch of business* being included, which are omitted when it is not intended to meet on the day named.

Whether, by the statute of 4 Edw. III. c. 14, it is meant that parliament should be held *once* a year, or oftener, *if need be*, is not decided; nor is it very material now to inquire, because the Mutiny-Act, and some other bills being passed annually, it has become necessary for parliament to assemble *once* at least in every year; and the prorogation at the end of the session is in practice only for a limited time within the year; and when that period expires, it is prolonged or not, according to the exigencies of the public service.

Every parliament must be opened either by the king in person or by his representative.

The power and jurisdiction of this body are so great as to have been styled omnipotent. It has sovereign and uncontrollable authority in the making of laws. It can regulate and new model the succession to the crown, as was done in the reigns of Henry VIII. and William III.; it can alter the established religion, as was done in the reign of Henry VIII. and his children; it can change even the constitution of the empire, and of parliament itself, as was done in the acts of union with Scotland and Ireland, and the several statutes for triennial and septennial elections.

No one can sit and vote in parliament unless he be twenty-one years of age.

No alien, though naturalized, is capable of being a member of parliament.

No member can vote or sit without first taking the oath of allegiance, supremacy, and abjuration, and subscribing the declaration against transubstantiation, the invocation of saints, and the sacrifice of the mass.

#### PRIVILEGES OF PARLIAMENT.

The privileges of parliament were principally intended to protect its members not only from being molested in the discharge of their legislative duties by their fellow-subjects, but more especially from being oppressed by the power of the crown.

By the 1 W. & M. st. 2. c. 2, it is declared, "that freedom of speech, debate, or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament." But this extends only to speeches *in parliament*; for, if a peer or member of the house of commons *publish* a speech calumniating another, he is liable to be sued or indicted.

To assault a member, or his menial, is a high contempt, and may be punished with great severity.

The privilege from arrest in civil causes is in a peer for ever sacred and inviolable; and in a commoner, during the sitting of parliament, and for forty days after its prorogation, and for forty days before the next appointed meeting; which ~~is~~, in effect, as long as the



parliament subsists, it seldom being prorogued for more than eighty days at a time.

But the privilege of parliament does not extend to treason, felony, breach of the peace, or any indictable offence whatever; and in civil suits the law only protects the *persons* of members from arrest, not their property from sale or sequestration. They are also subject to the bankrupt laws; and, by the 45 Geo. III. confirmed by the New Bankrupt Act, (6 Geo. IV. c. 16,) any trader, having privilege of parliament, committing an act of bankruptcy, a commission may issue against him, and persons acting under it proceed thereon in like manner as against any other bankrupt.

Thus much for the parliament, in its aggregate legislative capacity: we shall next speak more particularly of its constituent parts—namely, the king, lords, and commons.

### CHAP. III.

#### *The King.*

THE supreme executive power is vested in a single person—the king or queen; and the person entitled to it, whether male or female, is invested with all the ensigns and prerogatives of sovereignty.

The right of succession is, by custom, hereditary; but this right of inheritance may be changed or limited by the parliament: under which limitation the crown still continues hereditary; that is descendible to the next heir, male or female. Hence it is that the king is said *never to die*; but on the death of one sovereign the king survives in his successor.

#### KING'S COUNCILS.

The king's councils consist of the high court of parliament, the *peers* of the realm, the *judges*, and the *privy council*.

The *peers* are, by their birth, hereditary counsellors of the crown, and may be summoned to impart their advice in all matters of importance to the kingdom; or, they may individually demand an audience of the king,

and respectfully lay before him such matters as they judge important to the public welfare.

The *judges* are the king's counsellors in matters of law, and are required by statute to assist the king in all affairs of legal difficulty.

The principal council, however, of the king is the *privy council*. The number of members is indefinite, and at the pleasure of the king; but they must be natural-born subjects. They sit during the life of the king who nominates them, subject to removal at the royal discretion. On the demise of the crown, they continue for six months, unless sooner determined by his successor.

A privy counsellor is bound by oath to advise the king without partiality, affection, or dread; to keep his council secret, to avoid corruption, and assist in the execution of what is there resolved: he is empowered to inquire into all offences against government, and commit the offenders to take their trial in some court of law. In matters of property belonging to subjects, in this kingdom, the privy council cannot take cognizance; but in plantation and admiralty causes arising out of the kingdom, and in cases of lunacy and idiocy, though they involve questions of property, the privy council may take cognizance, being the court of appeal: in the former case, however, the privy council has latterly disclaimed all jurisdiction in admiralty causes, leaving them to the admiralty courts, and in such instance has refused to hear any appeals from the West Indies.

The court of the privy council, which must consist of three privy counsellors at least, is held in the cock-pit at Westminster.

A privy counsellor is protected in his person, and it is felony to assault, wound, or attempt to kill him in the execution of his office.

That portion of the privy council usually denominated the CABINET does not properly form a recognized part of the constitution of England. In practice, however, it is not the least important branch of the government, comprising the great public officers and ministers, who constitute the really efficient and responsible servants and advisers of the crown.

The number and selection of the cabinet council depend solely on the king's pleasure, and each member receives a summons or message for each attendance. In like manner, no privy counsellor attends, unless individually summoned for the particular occasion on which his assistance at council is required.

#### DUTIES OF THE KING.

By the oath administered at the coronation, the king solemnly promises to govern according to the statutes, the laws, and customs of the realm; to cause law and justice, in mercy, to be executed in all his judgments; to maintain the laws of God, the profession of the gospel, and the Protestant reformed religion, as by law established. And this solemn engagement is considered a fundamental and express contract between the king and the people.

#### ROYAL PREROGATIVES.

By the *royal* prerogatives are meant certain privileges enjoyed by the king in virtue of the regal office.

The king is the sole magistrate of the nation, all others acting by commission from, and in due subordination to, him; he has the sole right of sending ambassadors, of creating peers, of making war and peace; he may reject any parliamentary bill he pleases; and pardon any offences, except where the law has specially interfered.

No suit or action can be brought against the king, even in civil matters. If any one has a demand on the king in point of property, he may petition the Court of Chancery; where the chancellor will administer right as a matter of grace, not of compulsion.

No delay will bar the right of the king. In civil actions, however, relating to landed property, the king, like a subject, is limited to sixty years; and after fifty-five years' possession, a grant from the crown may be presumed, unless a statute has prohibited such a grant. *Parker v. Baldwin*, 11 E. R. 488.

It is a maxim, the king *can do no wrong*. If he be induced to make any improper grant to a subject, or be

guilty of any act of public oppression, it is presumed he has acted under the influence of weak or wicked ministers, who may be punished by indictment or parliamentary impeachment.

The king is not bound by any statute, unless expressly named therein; yet if a public act be made, which does not interfere with the rights of the crown, it is said to be binding upon him as upon the subject; and though he be not specifically named in any act, he may, if he please, take the benefit of it.

No costs can be recovered against the king, nor can he be a joint tenant; and it is provided that his debt shall be preferred before any of his subjects.

The king is the head of the *army and navy*, and has the control of all forts and garrisons within the realm. He has the power of establishing ports and havens. He may prohibit the importation of arms and ammunition; and confine his subjects within the realm, or recall them from abroad, on pain of fine and imprisonment.

He is the head of the *national church*; and has power to convene, prorogue, and dissolve the houses of convocation. In virtue of this prerogative arises the right to nominate to vacant bishoprics and other ecclesiastical preferments. He is the dernier resort in all spiritual matters, an appeal lying to him in chancery, from the sentence of every ecclesiastical judge.

The king is the arbiter of *foreign commerce*, has the right of issuing letters of marque and reprisal, and of granting safe conduct to subjects of different nations. He has the prerogative of establishing markets and fairs with tolls, of regulating weights and measures, of giving authenticity to the coin, and making it current as the universal medium of exchange.

The king is the *representative of the public*, and all criminal proceedings for offences are in his name. He has the sole power of erecting courts of judicature, but cannot administer justice personally, since he has delegated that power to his judges.

Lastly, the king is the *fountain of office, honour, and privilege*. All degrees of title are by his immediate grant. He has the right of granting precedence to any

of his subjects, except to the nobility, whose precedence is fixed by statute; of converting aliens into denizens, and of erecting corporations.

#### REVENUES OF THE CROWN.

The king's revenue is either *ordinary* or *extraordinary*. The *ordinary* revenue is that which has subsisted in the crown time immemorial; or else has been granted by parliament in exchange for such hereditary revenues as were found inconvenient to the public. The *extraordinary* revenues are the various taxes levied by parliament.

Of the *ordinary revenue* the principal are—1. All tithes arising in extra-parochial parishes. 2. The demesne lands of the crown, consisting of divers manors, honours, and lordships. 3. Fines, forfeitures, and fees, arising from courts of justice. 4. A tenth part of *royal fish*—which are whale and sturgeon—when either thrown on shore, or caught near the coast. 5. Mines of gold and silver. 6. Treasure-trove, which is treasure found hid in the earth, of which no owner appears: but it seems, from *Armory v. Delamere*, this does not extend to treasure, as gold, diamonds, money, or other valuable, found in the sea, or upon the earth, which belong to the finder, if no owner appear. 7. Waifs, which are goods stolen and thrown away by the thief in his flight. 8. Estrays, or animals found wandering, the owner of which is unknown. 9. Lands and goods forfeited for offences; and deodands, or whatever personal chattel is the immediate cause of the death of any reasonable creature. 10. Escheats of land, which happen on defect of heirs to succeed to the inheritance. 11. Droits of the crown and admiralty; being the proceeds of enemies' ships, detained prior to a declaration of war, of those taken by non-commissioned captains, of wrecks and goods of pirates. Lastly, the profits accruing from the custody of the property and persons of idiots and lunatics.

Most of these branches of the ordinary revenue have either fallen into desuetude or have been granted to private individuals; so that they add little to the royal income. In lieu of the ordinary revenue of the crown, a

fixed sum has been appropriated by parliament for the maintenance of the king and the royal household. This sum is payable out of the *extraordinary* revenue, or that great mass of public income arising from the various taxes imposed by parliament, and a great portion of which is applied to the payment of the interest of the public debt, the maintenance of the army and navy, the administration of justice, and other matters connected with the national government.

THE QUEEN AND ROYAL FAMILY.

The *queen consort*, or wife of the king, is a public person enjoying peculiar privileges. She can purchase land and make leases without the concurrence of her lord; she can also take a grant from her husband, which no other wife can; she may also sue and be sued alone, without joining her husband. In short, she is in all legal proceedings considered a single, and not a married woman; and the common law has established this to prevent the king being troubled with his wife's domestic affairs.

To violate the queen's person is high treason, as well in the violator as the queen herself, if consenting.

A queen *dowager* is the widow of the late king, and as such enjoys most of the privileges to which she is entitled as queen consort. But it is not high treason to conspire her death, or to violate her chastity, because the succession to the crown is not thereby endangered.

The *Prince of Wales*, or heir apparent to the crown, and his consort, and also the princess royal, or eldest daughter of the king, are peculiarly regarded by the laws. To conspire the death of the former, or violate the chastity of the latter, is high treason.

By the rest of the *royal family* is understood the younger sons and daughters of the king, not immediately in the line of succession. These have precedence before all peers and officers of state, ecclesiastical or temporal. The education of the presumptive heir to the crown is under the control of the king; and no descendant of George II. can marry without the king's consent, unless he be twenty-five years old; nor even

then, without twelve months' notice being given to the privy council; or if, in the course of these twelve months, parliament expresses its disapprobation of the match. A marriage otherwise entered into will be void: the minister, and all persons present, incur the penalties of *præmunire*.

#### CHAP. IV.

#### *House of Lords.*

THE lords are either *spiritual* or *temporal*: the former consist of two archbishops and twenty-four bishops. Since the union with Ireland, four spiritual lords are also sent from that kingdom. The spiritual lords are not considered peers, but merely lords of parliament, who hold, or are supposed to hold, certain ancient baronies under the king.

The *lords temporal* consist of all peers of the realm, whose number may be increased at the will of the king. Sixteen of these peers are chosen by, and sit as representatives of, the peers of Scotland; twenty-eight represent the nobility of Ireland. Scotch peers are elected only for one parliament; the Irish peers for life: the rest of the peerage hold by descent or creation.

The total number of peers who sit in the House of Lords is 390, and are as follow:—

English archbishops .....	2
Irish archbishops.....	1— 3
English bishops .....	24
Irish bishops.....	3— 27
Dukes of the royal family ..	5
Dukes not of the royal family	19
Marquisses .....	16
Earls .....	104
Viscounts .....	21
Barons .....	151
Peers of Scotland.....	16
Peers of Ireland .....	28—360

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390

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## PRIVILEGES.

A peer may vote by proxy,—a privilege which is denied to the members of the lower house.

All bills that in any way affect the rights of the peerage are to originate in the House of Peers, and to undergo no change or alteration in the commons.

Each peer has a right, by leave of the house, when a vote passes contrary to his sentiments, to enter his dissent on the journals of the house, with the reasons of such dissent; which is styled his *protest*.

A peer sitting in judgment gives not his verdict upon oath, like a commoner, but upon his honour. He answers also bills in chancery upon his honour, and not upon his oath. But when he is summoned as a witness, either in civil or criminal cases, he must be sworn. But in criminal trials, on arraignment, he is not required, like other culprits, to *hold up his hand*. 2 Hale, 219 n. a.

Peers are created either by *writ* or by *patent*. The creation by writ, or the king's letter, is a summons to attend the House of Peers by the style and title of the barony which the king is pleased to confer; that by *patent* is a royal grant to the subject of any dignity and degree of peerage, as baron or viscount.

When a peer of the realm is newly created, he is introduced into the House of Peers by two lords, of the same form, in their robes, garter king at arms going before, and his lordship is to present his writ of summons, &c. to the lord chancellor, which being read, he is conducted to his place. Lords by descent are introduced with the same ceremony, the presenting of the writ excepted.

## CHAP. V.

*House of Commons.*

ALL grants for raising the supplies to meet the expenditure of government must first originate in the House of Commons, though they cannot have the force of law without the assent of the other two branches of the legislature.

The lords may reject the grants of the commons alto-



gether, if they think them too lavish, but cannot make the least alteration or amendment in a *money bill*; under which appellation is included all sums directed to be raised on the people for the exigencies of the state. And this rule is now extended to bills for canals, paving, provision for the poor, and to every bill in which tolls, rates, or duties are ordered to be collected; also to bills in which pecuniary penalties and fines are imposed for offences. 3 *Huts*. 110.

#### QUALIFICATIONS OF MEMBERS.

It is not every man that is qualified to be chosen a member of parliament.

They must not be minors, nor aliens born.

They must not be of the twelve judges, because they sit in the House of Lords; nor of the clergy, for they sit in convocation; nor persons attainted of treason or felony.

Sheriffs of counties and mayors, and bailiffs of boroughs, are not eligible in their respective jurisdictions; but sheriffs of one county are eligible to be knights of another.

No person concerned in the management of any duties or taxes created since 1692 (except commissioners of the treasury); nor any officer of the excise, customs, stamps, &c.; nor any person holding any new office under the crown, created since 1705, is capable of being elected a member.

Pensioners under the crown, during pleasure, or for a term of years, are excluded. But a pension received by the wife does not disqualify the husband, *Corb. Dan*. 114.

Any member accepting an office of profit under the crown, which existed prior to 1705, vacates his seat; but such member is capable of being re-elected.

Every member for a county must have real property to the value of 600*l.* per annum, and every citizen and burgess to the value of 300*l.*; except the eldest sons of peers, the members for the two universities, and persons otherwise qualified to be knights of the shire.

Contractors with government are ineligible; and if any person so disqualified shall sit in the house, he shall forfeit 500*l.* per day; and if any person who contracts

with government admits any member of parliament to share in it, he shall forfeit 500*l.* to the prosecutor. But an army-clothier who contracts with a colonel of a regiment, or his agents, to furnish clothing for such regiment, is not disqualified. *Thomson v. Pearse.* 3 Moore, 260.

By the 3 Geo. IV. c. 55, no police justice of the metropolis can sit in parliament.

And, lastly, no peer, papist, or outlaw, nor person in holy orders, is eligible to a seat in the House of Commons.

By the 52 Geo. III. c. 144, members becoming bankrupt and not paying their debts in full, are disqualified from sitting or voting for twelve calendar months; and if, at the expiration of that period, the commission is not superseded, or the debts paid in full, their seats become vacant.

The representative function cannot be resigned; and every member is obliged to obey a call of the house, unless he can show such cause as the house will think a sufficient excuse for his non-attendance. The only way of vacating a seat is by accepting a situation *of profit* by which the law declares his seat vacant. When members wish to do this, and retire from parliament, it is now usual for the crown to grant them the office of the stewardship of the Chiltern Hundreds, or of East Hendres.

The total number of members is 658;—513 for England, 45 for Scotland, and 100 for Ireland.

#### QUALIFICATIONS OF ELECTORS.

Persons twenty-one years of age, possessing freeholds within the county to the value of 40*s.* a year, clear of all incumbrance, are entitled to vote for county members.

No person shall vote in right of any freehold granted to him *fraudulently*, to qualify him to vote. Fraudulent grants are such as contain an agreement to re-convey the estate granted; which agreement is void, and every person preparing, executing, or voting under it forfeits 40*l.* 10 Ann, c. 23.

No person shall vote in respect of annuity or rent-charge, unless registered with the clerk of the peace six calendar months preceding; except in cases where it comes to him by descent, marriage, devise, presentation to a benefice, or promotion to an office: in all which cases a certificate upon oath must be entered in the same manner before the first day of the election. In mortgaged or trust estates, the person in possession, under the same restrictions, is entitled to vote.

To prevent the splitting of freeholds, only one person can vote for any one house, or tenement. But if an estate descend to a number of females, the husband of each, having 40s. a year, would be entitled to vote. A husband may also vote for his wife's right of dower from her former husband's estate, without an actual assignment of it.

No estate qualifies to vote unless assessed to the land-tax six months before the election: if the estate is acquired by marriage or descent, it must have been assessed to the land-tax two years prior to the day of election.

By 30 Geo. III. c. 35, the assessment may be either in the name of the proprietor or occupier.

As an omission or irregularity in the land-tax assessment operates as a disfranchisement, it behoves every one anxious to preserve the elective privilege to examine the annual list of assessments, and, upon discovering that he is not duly assessed, he may appeal to the commissioners, and from them to the quarter sessions, if he is dissatisfied with their decision.

By 22 Geo. III. c. 41, no person employed in collecting or managing the duties of excise, customs, stamps, salt, windows, or houses, or the revenue of the post-office, can vote at any election, under a penalty of 100*l*. This does not extend to freehold offices granted by letters patent.

Persons receiving alms, or parish relief, within a year before the election, are disqualified from voting, except they be qualified freeholders, *Sim. Election Law*, 102. But charity donations, by will, annually distributed, do not disqualify.

By 7 & 8 Geo. IV. c. 37, persons employed by candidates, as council, attorney, poll-clerk, or flagman, within

six months before, or fourteen days after the election, and receiving remuneration for such employment, are disqualified from voting. A candidate giving any ribbon or cockade to a voter is subject to a penalty of 10*l.*; but as the act does not say "to be recovered *with costs*," this clause will be of little use. By the same act, voters are exempt from serving as special constables during an election.

With respect to the right of election in CITIES and BOROUGHs it depends on their respective charters, customs, and constitutions.

By 26 Geo. III. c. 100, freemen are not entitled to vote unless admitted to their freedom six calendar months before the election; except such as claim their freedom by birth, marriage, or servitude. But in bur-gage-tenure boroughs, of which there are twenty-nine in England, no period of possession is required from voters.

When householders or inhabitants claim to elect, they must have been resident six months before the election.

By 3 Geo. IV. c. 55, no police justice of the metro-polis, surveyor, or constable, can vote for any member of parliament, for Middlesex, Surrey, Westminster, or Southwark, under a penalty of 100*l.*

Lastly, no woman, peer, alien, or outlaw; felon attainted or convict; papists refusing the oath of allegiance and abjuration; persons excommunicated, or guilty of bribery, perjury, or subornation of perjury; blind, dumb, deaf, or lunatic, can vote at any election either for county, city, or borough.

By 7 & 8 Will. III. c. 27, all electors may be required, before they vote, to take the oaths of allegiance and supremacy.

#### MODE OF ELECTION.

The instrument or authority by which an election is held in a county, or city, or a town being a county of itself, is a *writ*; and in a borough a *precept*. The writs are made out by the clerk of the crown, in chancery; and after the election of the members, are returned into the crown office there.

After the parliament is assembled, and during its con-

tinuance, the House of Commons alone has the right of issuing writs to fill up vacancies.

All soldiers are to remove, at least one day before the election, to the distance of two miles or more, and not to return till one day after the poll is ended. But this does not extend to soldiers in garrison, or to soldiers entitled to vote at elections; nor to the guards in Westminster or Southwark, or to any place of royal residence.

No lord of parliament, or lord-lieutenant of counties, has any right to interfere in the election of commoners; and the lord-warden of the cinque ports shall not recommend the members there.

If any officer of the excise, customs, or other branches of the revenue, presume to intermeddle in elections, influencing any voter, he forfeits 100*l.* and is disqualified from holding any office under the crown.

By 7 & 8 Will. III. c. 4, no candidate shall, after the date of the writ, or after the vacancy, give any money or entertainment to the electors, or promise to give any, on pain of being incapable to serve that place. The payment of travelling expenses and compensation for loss of time are equally subject to the penalties of bribery; and the promise of any office, employment, or reward, to influence a voter, subjects the candidate to a penalty of 1000*l.*

If an innkeeper furnish provisions to voters at the request of a candidate, he cannot afterwards maintain an action against that candidate, as the courts will not enforce the performance of a contract made in violation of the statute, *Ribbans v. Bickett*, 1 B & A, 264.

The statutes against treating and bribery do not create any incapacity for sitting in the house, and the member may be re-elected.

By 9 Ann, c. 5, if a candidate, upon the request of another candidate, or by two electors, either at the election or at any time before the return of the writ, refuse to swear to his qualification, his election is void.

When a double return is made, the persons returned are not competent to sit, till the return has been decided upon by a committee.

## METHOD OF TRANSACTING BUSINESS.

The method of doing business is much the same in the Lords and Commons. Each house has its speaker. The speaker of the House of Lords is the lord-chancellor. The speaker of the House of Commons is chosen by the house, but must be approved by the king. The speaker of the Commons cannot give his opinion on any subject before the house; but the speaker of the Lords, if a lord of parliament, may. In both houses a majority binds the whole, and this majority is given publicly and openly.

When an act of parliament of a private nature is wished for, a petition is presented by a member, which is either referred to a committee to examine the matter, or, on the petition itself, if not opposed, leave is given to bring in a bill. If the matter is of a public nature, the bill is admitted without a petition, on the motion of a member. The bill is drawn out on paper, with a number of blanks and spaces for insertions and alterations. It is read a first time, and, some little time after, a second. After each reading the speaker explains the substance of the bill, and puts the question—Whether it shall proceed any further?

After the second reading it is committed; that is, referred to a committee, either private or of the whole house. A committee of the whole house is composed of every member, and, to form it, the speaker quits the chair, (another member, appointed every new parliament for the office, being chairman,) and may give his opinion as a private member. In the committee the bill is discussed clause by clause, amendments made, the blanks filled up, and sometimes the bill entirely new-modelled. When the opinion of the house has been taken on each clause and amendment the bill is ordered to be engrossed. This done, it is read a third time; when, if a new clause be added, it is done by tacking a separate piece of parchment to the bill, which is called a *rider*. The speaker then again opens the contents; and, holding it up in his hands, puts the question—Whether it shall pass?

If agreed to, it is carried to the Lords for their con-

currence, where it passes through similar forms ; and, if agreed to by them, it waits the royal assent ; if rejected, no notice is taken, to prevent altercation. If the Lords make any amendment to it, it is sent down again to the Commons for their concurrence. Should the Commons object to the amendment, a conference is held between members deputed by each house to adjust the difference. Where both parties remain inflexible, the bill is dropped.

Similar forms are observed when a bill begins in the House of Lords.

In the Commons, the speaker has a casting vote in case of an equality of votes ; but in the Lords, the speaker's vote is counted with the rest of the house ; and in the case of an equality of votes, the *non-contents*, or negatives, are considered the majority.

#### ROYAL ASSENT.

The royal assent is given either in person or by commission. When a bill has received the royal assent in either of these ways, it becomes a statute, or act of parliament.

By a legal fiction, the whole session of parliament is considered as one day ; and, therefore, an act of parliament was held to operate from the day on which parliament assembled, at whatever period of the session it passed. But this was remedied by the 33 Geo. III. c. 13, by which all acts are directed to commence from the date of the royal assent, unless some other period is expressly mentioned in the act. See *Act of Parliament and Bill*, in the DICTIONARY.

An *adjournment* is a discontinuance of sitting from one day to another during the session.

*Prorogation* is an act of royal authority, and is a discontinuance of parliament from session to session. After prorogation, all bills begun and not completed, must, if wished for, be resumed afresh in the next session ; but, after adjournment, the business of the house is taken up in the state in which it was left. Orders of parliament also determine by prorogation, consequently, persons taken into custody under such

orders, are, after prorogation of parliament, as well as after dissolution, at liberty.

*A dissolution* is the ending or civil death of the parliament, and may happen three ways. 1. By the will of the king, expressed either in person, by commission, or proclamation. 2. By the demise of the crown. 3. A parliament may expire by length of duration. The utmost extent of time parliament was allowed to sit by 6 W. & M. c. 2, was three years; after the expiration of which, reckoning from the return of the first summons, the parliament was to have no longer continuance. But, by 1 Geo. 1. st. 2, c. 38, this term was extended to *seven years*.

## CHAP. VI.

### *Rights of the People.*

THE people form that great portion of the community which is separate from the government; and, having briefly stated the powers of the latter, we shall next advert to those general measures by which the former are shielded from the oppression and encroachments of authority.

The chief acts, by which the rights of the people are recognised, are Magna Charta, the Coronation Oath, the Petition of Right, the Habeas Corpus Act, the Bill of Rights, and the Act of Settlement. With the exception of the last, the Bill of Rights is the most recent declaration in favour of public liberty; and comprising, as it does, a distinct affirmation of all those points on which the people and their rulers had been formerly divided, it may now be considered the great constitutional act by which the national rights and immunities are acknowledged and guaranteed.

The Bill of Rights, or declaration delivered by the Lords and Commons to the Prince and Princess of Orange, February 13th, 1689, and afterwards enacted in parliament, and incorporated in the statute-law of the realm, declares,—

. That the pretended power of suspending laws, or the



execution of laws, by regal authority, without the consent of parliament, is illegal.

That levying money for the use of the crown by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

That it is the right of the subject to petition the king, and all commitments and prosecutions for such petitioning is illegal.

That the raising or keeping a standing army within the kingdom in time of peace, without the consent of parliament, is against law.

That subjects who are Protestants may have arms for their defence suitable to their condition, and as allowed by law.

That elections of members of parliament ought to be free.

That the freedom of speech and debate and proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

That jurors ought to be duly empaneled and returned, and jurors who pass upon men in high treason ought to be freeholders.

That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

And for redress of grievances and amendment of the laws, parliaments ought to be held frequently.

The various claims set forth in this declaration are affirmed to be the indubitable rights and liberties of the people; and are again asserted in the Act of Settlement, which limited the crown to the family of his present Majesty. Some new provisions were also added, for better securing our rights and immunities, which the statute declares to be "the birth right of the people of England," according to the ancient doctrine of the common law.

The next most important guarantee of the liberties of

the people is the HABEAS CORPUS ACT, the 31 Car. II. c. 2. By this act, if any person be imprisoned by the order of any court, or the king himself, he may have a writ of habeas corpus to bring him before the Court of King's Bench or the Common Pleas, who shall determine whether the cause of his committal be just.

As the 31 Car. II. extends only to committals in criminal cases, the legislature has subsequently extended the remedies it gives to all miscellaneous causes of confinement, and the power of issuing the writ to all the judges.

By the 43 Geo. III. c. 140, any judge of the courts of Westminster may award a writ of habeas corpus, for bringing up prisoners for trial or examination by courts-martial, commissioners of bankrupts, or any other commissioners, acting under any commission or warrant from the crown. Application for a habeas corpus under this act ought to be made to a judge out of court.—*Gordon's Case*, 2 M. & G. 582.

By the 56 Geo. III. c. 100, any of the judges in England or Ireland may award, in vacation time, a habeas corpus, returnable immediately before the person awarding the same, or any other judge of the court.

In times of great political excitement, the operation of the Habeas Corpus Act is usually suspended. But this suspension does not enable any one to imprison without cause, or reason for so doing; it only prevents persons who are committed from being bailed, tried, or discharged during the suspension, leaving to the committing magistrate all the responsibility attending on illegal imprisonment. It is very common, therefore, to pass an act of indemnity subsequently, for the protection of those who either could not defend themselves in an action of false imprisonment without making improper disclosures of the information on which they acted, or who have done acts not strictly defensible at law, though apparently justified by the necessity of the moment.

## PART II.

## ADMINISTRATION OF JUSTICE.

WHEN a person has sustained an injury, the first consideration naturally is, the mode whereby that injury can be redressed. It will be proper, therefore, before we enter on the wrongs to which individuals are liable, shortly to advert to the tribunals and remedies provided by the laws of England for the administration of civil and criminal justice. This division of the subject will be included under the following heads:—

- I. *Courts of Law.*
- II. *Civil Process.*
- III. *Criminal Process.*
- IV. *Process in Equity.*—*Summary Conviction.*—*Recognition*
- V. *Constitution of Juries.*
- VI. *Evidence.*

## CHAP. I.

*Courts of Law.*

A COURT is defined to be a place where justice is judicially administered; some of which are *courts of record*, others *not of record*.

A court of record is that where the acts and judicial proceedings are enrolled in parchment, for a perpetual memorial, and which has power to hold pleas, according to the course of the common law, in all actions where the debt or damage is to the amount of 40*s.* or upwards: such as the Court of King's Bench and the Common Pleas.

A court *not of record* is that where proceedings are not enrolled in parchment, and which has no general authority to fine and imprison: such are the county courts, or the courts baron. These courts can hold no plea of matters cognizable by the common law, unless under the value of 40*s.* nor of any forcible injury what-

ever, not having any process to arrest the person of the defendant.

The supreme court of judicature in the kingdom is the *House of Peers*. It has no original jurisdiction over causes, but only upon appeals and writs of error, to rectify any injustice or mistake of the courts below ; and is, in all causes, the last resort, from whose decision no further appeal to any other tribunal is permitted.

Next to the House of Peers is the *Court of Chancery*, which is of very ancient institution. Its jurisdiction is either *ordinary* or *extraordinary*: in the first, its mode of proceeding is conformable to the common law ; in the last, it exercises jurisdiction in cases of equity, in order to abate the rigour of the common law, and afford a remedy for grievances in which the ordinary law-courts are inadequate.

When a plaintiff can have his remedy at common law, the Court of Chancery will not interfere ; neither will it entertain a suit for any amount under 10*l.* except it be in cases of charity ; nor will it relieve persons in suits where the matter of them tends to overthrow any fundamental point of the common or statute law.

The lord chancellor is the highest public officer in the kingdom. To him belongs the appointment of all justices of the peace. He is a privy counsellor by his office, and speaker of the House of Lords by prescription. He is keeper of the king's conscience ; visitor, in right of the king, of all royal hospitals, colleges, and foundations ; and patron of all the king's livings, of the value of 20*l.* or under, per annum, in the King's Book. He is the guardian of infants and lunatics, and has the general superintendence of all charitable uses in the kingdom.

In consequence of the important and increasing duties of the lord chancellor, the *vice-chancellor* was created by the 53 Geo. III. c. 25, to assist him in his judicial functions. All causes which were before heard by the lord chancellor may now be heard and decided by the vice-chancellor, subject to the control and revision of the lord chancellor.

By 6 Geo. IV. the salary of the vice-chancellor is

fixed at 6000*l.*; he must be a barrister of fifteen years' standing, and holds his office during good behaviour, subject to removal upon the address of both houses of parliament.

The vice-chancellor has precedence next to the *master of the rolls*, who is also assistant to the lord chancellor, and has certain causes assigned to him to hear and decree, being assisted by one or two masters in chancery. All decrees made by the master of the rolls must be signed by the lord chancellor before they are enrolled. His salary is 7000*l.* a year, and he holds his office by patent for life. The time and place of his sitting are usually at six o'clock in the evening, at his own court, in the Rolls' Yard.

The *Court of King's Bench* is the supreme court of the common law in the kingdom; consisting of a chief justice and three *puisne* justices, who are, by their offices, the great conservators of the peace and head coroners of the land.

The jurisdiction of this court is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined here, or prohibit their progress below. It controls all civil corporations in the kingdom. It commands magistrates and others to do what their duty requires, in cases where there is no other specific remedy. It protects the liberty of the subject, by summary and speedy interposition. It takes cognizance of both criminal and civil causes; the former in what is called the crown side, the latter in the plea side, of the court.

The King's Bench is likewise a court of appeal, into which may be removed, by writ of error, all determinations of the Court of Common Pleas, and, generally, of all inferior courts of record in England. Yet, even this high and extensive tribunal is not the dernier resort of the subject; for, if a suitor be not satisfied with any decision here, he may remove it by writ of error into the House of Lords, or the Court of Exchequer Chamber, according to the nature of the suit, and the manner in which it has been prosecuted.

The jurisdiction of the *Court of Common Pleas*, like that of the other courts of Westminster, is general, and extends throughout England; but it has no cognizance of pleas of the crown, and common pleas are all that are not such.

The judges of the court are four in number, one chief and three petty judges, created by the king's letters patent, who sit every day in the four terms, to hear and determine all matters of law arising in civil causes, whether in real, personal, or mixed actions. These it takes cognizance of as well originally as upon removal from the inferior courts.

Sergeants-at-law can alone plead at the bar of this court, or sign any special pleading. An appeal lies to the Court of King's Bench.

The next inferior court is the *Court of Exchequer*. It is called the Exchequer from the chequered cloth, resembling a chess-board, which covers the table, and on which, when certain of the king's accounts are made up, the sums are marked, and scored in counters. It is held before the lord treasurer, the chancellor of the exchequer, the chief baron, and three puisne barons. The chief business of the court is to take cognizance of matters connected with the public revenue; though, by a fiction of law, common to this court as well as to that of the King's Bench, all personal suits may be prosecuted in the Court of Exchequer.

The *Court of Exchequer Chamber* determines writs of error from the common-law side of the Court of Exchequer. It is sometimes composed of all the judges of the three superior courts and the lord chancellor; where such causes as appear to the judges, upon argument, weighty and difficult, are discussed, before any judgment is given upon them in the courts below.

The *Court of Assize and Nisi Prius* are composed of two or more commissioners, who are twice every year sent round the kingdom to try, by juries of the respective counties, the truth of such matters of fact as are brought before them. The commissioners must consist of one of the judges of the courts at Westminster or a king's sergeant. Their powers extend to every descrip-

tion of offence, civil or criminal. They usually make their circuits in the respective vacations after Hilary and Trinity terms.

Till lately, the assizes in the northern counties were held only once a year; they are now held twice, and three times in the counties which form the *home circuit*.

A session is also held twice every year in each county in Wales, by judges appointed by the king, called the *Great Sessions*, in which all real and personal suits are held, with the same form of process as at Westminster. In London and Middlesex, the courts of *Nisi Prius*, or *Sittings after Term*, as they are called, are held in or after term, before the chief or other judge of the superior courts.

The Court of *General Quarter Sessions* is held by three justices of peace in every county, once every quarter of a year, for the trial of misdemeanors and other matters touching the breach of the peace. By the 54 Geo. III. c. 84, the Michaelmas quarter sessions are directed to be holden the first week after the 11th of October; and, for the more speedy despatch of business, the 59 Geo. III. c. 28, has empowered the court, whenever the business seems likely to occupy more than three days, to select two or more justices, who shall sit apart, and proceed with the matters allotted to them at the time the court is proceeding with the remainder of the business.

The *Court for Relief of Insolvent Debtors* is a recent institution, consisting of a chief and two other commissioners, being barristers at law of ten years' standing at the least. It is a court of record for the purposes of the act by which it is created; and one or more commissioners are appointed to sit twice a week throughout the year in the cities of London or Westminster, or in the county of Middlesex, within the bills of mortality. Of the constitution of the Insolvent Court, and of the mode in which it is now regulated, by the 7 Geo. IV. we shall hereafter speak, under the head of *Insolvency*.

The *County Courts* are kept by the sheriffs; and before the courts of Westminster were erected, were the chief

## ECCLESIASTICAL AND MARITIME COURTS. 29

courts in the kingdom. Their powers were greatly reduced by the statute of *Magna Charta*: their jurisdiction is now limited to the determination of trespasses and debts under 40s.

The *Court Leet* is a court of record incident to a hundred, ordained for punishing encroachments, nuisances, fraudulent weights, and offences against the crown. The steward is the judge; and every one, from the age of twelve to sixty years, that dwells within the leet, is obliged to do suit within this court, except peers, clergymen, &c. The lord of the leet ought to have a pillory and tumbrel to punish offenders; or, for want thereof, he may be fined, or the liberty seized; and all towns within the leet are to have stocks in repair; and the town that has none is to forfeit 5*l*.

The *Court Baron* is that court which every lord of a manor has within his own precinct, and is an inseparable adjunct to a manor. It must be held by prescription—for it cannot be created at this day—and is to be kept on some part of the manor. The court is for passing estates and surrenders, and for receiving homage, duties, heriots, and customs.

There is yet another court known to the law of England, which is the *Court of Pie Poudre*; so called because it is usually held in summer, when the suitors have dusty feet, and from the expedition of hearing causes before the dust leaves the feet. It is a court of record incident to every fair and market, of which the owner of the toll of the market is judge; and its jurisdiction extends to administer justice for all commercial and trading injuries done in the fair and market. An appeal lies to the courts at Westminster.

## ECCLESIASTICAL AND MARITIME COURTS.

There are various other courts for the administration of justice, which take cognizance of injuries chiefly of an ecclesiastical, military, and maritime nature.

The principal ecclesiastical court is the *Court of Arches*, said to be so called from its having been anciently held in the crypt of Bow-church, which was originally built on *arches*. The thirteen parishes of London, which



are peculiars of the Archbishop of Canterbury, are under the immediate jurisdiction of the judge of this court, who is hence styled the Dean of the Arches.

The *Court of Peculiars* is a branch of, and annexed to, the Court of Arches. It has a jurisdiction over all those parishes through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only.

The *Prerogative Court* is guardian of the various rights of succession to property. It has a registry attached to it, in which all original wills are deposited; and grants letters of administration to executors and next of kin.

The *Court of Delegates* is the highest of all the ecclesiastical courts. Appeals lie to it from any of the other courts, and its decisions are generally considered as final. The king has power to grant a commission of review, but this is rarely exercised.

The only maritime court it is necessary to mention is the *Court of Admiralty*, which takes cognizance of all offences on the high seas, and of prize-vessels taken in time of war. It is held before the lord high admiral, or his deputy, who is the judge of the court. It proceeds according to the rules of the civil law, and consequently is not allowed to be a court of record any more than the ecclesiastical courts. When the causes before it relate to offences committed at sea, it holds its sittings at the Sessions-house, Old Bailey, and any barrister at common law may plead before it.

Besides these courts of a general nature, there are others with a special jurisdiction; as the *Court of Commissioners of Sewers*, whose business is to overlook the repair of sea-banks, the cleansing of public streams, ditches, and conduits. They are appointed by commission, under the great seal, and their authority is limited to such county or district as the commission expresses.

The *Court of the Marshalsea* and the *Palace Court* have jurisdiction to hold pleas of all manner of actions to the amount of 40s. and upwards, which shall arise between parties within twelve miles of Whitehall, the city of London excepted, and are now held once a week in

Great Scotland-Yard, Westminster. This is a convenient tribunal for the recovery of small debts ; its sittings are throughout the year, without any vacations, and a cause may be commenced and ended in five or six weeks. A writ of error lies to the Court of King's Bench.

The *Lord Mayor's Court*, for actions of debt, appeals, and apprenticeships, within the city of London, is held by the recorder, in Guildhall. Decisions are given in fourteen days, at an expense of about 30s. ; and no action can be removed, unless the debt exceed 5*l*.

The *Sheriff's Court*, for debt and accounts, also held in Guildhall, by the sheriff, or his deputy, every Wednesday, Thursday, Friday, and Saturday. From this court an appeal lies to a superior court in Westminster, if the debt exceed 5*l*. ; but if the debt be under 10*l*. it cannot be allowed till bail be put in.

It only remains to notice *Courts of Request* or *Courts of Conscience*, for the recovery of small debts. These were established in London so early as the reign of Henry VIII. ; but all former acts were repealed and beneficially amended by the 39 & 40 Geo. III. c. 104. By it two aldermen, and not less than twenty inhabitant householders, are appointed for a month in rotation from the several wards. They are to sit from time to time. If only three meet on the day appointed for a sitting, their jurisdiction is limited to debts of 40s. ; if as many as seven, it is extended to those of 5*l*.

The time and expense of proceeding are very inconsiderable, which makes these courts a great benefit to trade ; and several towns have succeeded in establishing them on the same plan as that in the city of London. To this court any person residing, or earning a living within the city or its liberties, may be summoned ; and the commissioners may direct the debt to be paid, either in one sum or by instalments, as may seem most consistent with equity and good conscience. The power of imprisonment is regulated, and can never exceed one day for each shilling of the debt, unless it be proved the defendant has money or goods which he fraudulently conceals. The proceedings are registered, and cannot be removed into any other court.

When a debt is due from two partners, it is sufficient to summon one of them.

Witnesses are compelled to attend, under a penalty of 40s.

Minors are liable for necessities, and cannot plead their minority when the debt has been contracted in the employment of clerk, shopman, or labourer. No attorney, or solicitor, or other officer of any of the courts of law at Westminster, has any privilege of exemption from the jurisdiction of this court.

## CHAP. II.

### *Civil Process.*

UNDER the jurisdiction of one of the courts mentioned in the last chapter almost every description of wrong may be brought ; and the nature of the injury determines the process an individual ought to adopt, and the tribunal to which he ought to apply, for the redress of his grievance.

Injuries are of two kinds, *civil* and *criminal*: the former are such private wrongs as affect only the interest of individuals ; the latter are those greater delinquencies which endanger the peace and well-being of society, and are denominated crimes and misdemeanors.

The remedy for a civil or private injury is by *action* ; in which an individual seeks compensation for some injustice he has sustained in his reputation, person, or property. The remedy for a public or criminal wrong is by *indictment* ; in which the object sought is not compensation to the sufferer, but the punishment of the offender. The former is at the risk and suit of an individual ; the latter at the suit of the crown, as the chief magistrate and general conservator of the public safety.

The judicial process in civil and criminal suits is in many respects similar ; but, that the points in which they differ may be more clearly understood, we shall briefly indicate the steps in civil and criminal procedure.

The first step in a law-suit for the redress of a private injury is the suing out of the Court of Chancery the ORIGINAL WRIT: which is a mandatory letter from the king, in parchment, sealed with the great seal, and di-

rected to the sheriff of the county wherein the injury is supposed to be committed, requiring him to command the party accused either to do justice to the complainant, or else to appear in court and answer the accusation against him.

The day on which the defendant is ordered to appear in court, and on which the sheriff is to bring in the writ, and report his proceedings thereon, is called the *return of the writ*, it being then returned by him to the king's justices at Westminster ; which is the judges' warrant to proceed to the determination of the cause. The writ is always returnable at the distance of at least fifteen days from the date, or *teste*, and upon some day in one of the four terms in which the court sits for the dispatch of business.

In each term there are stated days called *days in bank*, generally at the distance of a week from each other ; and on one of these return days, or days of appearance, all original writs must be made returnable. But the person summoned has three days of grace beyond the return of the writ, in which to make his appearance ; and if he appear on the fourth day, inclusive, it is sufficient.

The next stage for carrying on the suit is the *PROCESS*, being the means of compelling the defendant to appear in court, and of which the primary step is by giving him notice to obey the writ. If the defendant appear upon notice, his appearance is recorded, and he puts in sureties for his future attendance and obedience ; which sureties are called *common bail*, being those renowned personages John Doe and Richard Roe. Or, if the defendant does not appear on the return of the writ, or within four, or in some cases eight, days after, the plaintiff may enter an appearance for him, as if he had really appeared ; and may file common bail in the defendant's name, and proceed thereupon as if the defendant had done it himself.

But if the plaintiff will make *affidavit*, or assert, upon oath, that the cause of action amounts to 20*l.* he may *ARREST* the defendant, and make him put in substantial securities for his appearance, called *special bail*. The method of putting in special bail to the sheriff is by en-

tering into a bond. with one or more sureties, not imaginary persons like Messrs. Doe and Roe, but real responsible bondsmen, to insure the defendant's appearance at the return of the writ. The sheriff may, if he please, let the defendant go without sureties ; but that is at his own peril. Or, instead of putting in special bail, the defendant may, by the 43 Geo. III. c. 46, deposit with the sheriff the sum sworn to on the back of the writ, together with 10*l.* for costs ; and this deposit is repaid to the defendant on his perfecting bail, or rendering himself to prison ; but, if neither is done, it is paid over to the plaintiff. Or the defendant, by 7 & 8 Geo. IV. c. 71, may, instead of perfecting special bail, according to the usual course, allow the deposit to be paid into court, or if he remain in custody, or give bail, he may pay the debt into court, with 20*l.* to answer costs, and file common bail.

In London and Middlesex, special bail, in the King's Bench, must be put in within four days, exclusive of the return of the writ : in any other county, within six days. But, where the action is brought in the Common Pleas, special bail may be put in within eight days. In the King's Bench, bail is put in before one of the judges sitting in the Bail Court, by virtue of 57 Geo. III. : in the country, before a commissioner appointed for that purpose, by the 4 Will. & Mary. Each surety must swear he is worth double the amount of the debt, after payment of his own debts ; but if the sum sued for exceed 1000*l.* each is only required to justify himself in 100*l.* more than that sum.

With respect to the manner of making an arrest, the corporal seizing or touching the body is not absolutely necessary ; it is sufficient if the bailiff have such possession of the person of the defendant that escape is hardly possible. Thus, if a bailiff come into a room, and tell the defendant he arrests him, and lock the door, it is enough. *Bare words*, however, without some intimation of power over the person will not constitute an arrest.

After the arrest, the officer may justify breaking open any house in which the defendant may take refuge ;

otherwise he has no such power, but must watch his opportunity to arrest him. If, however, he enter the outer door *peaceably*, he may then break open the inner door, though it be the apartment of a lodger, if the owner himself occupies part of the house. But if the *whole* house be let in lodgings, or each lodging is considered a separate dwelling, it seems the door of each apartment would be considered an outer door, which could not be legally broken open to execute an arrest.

No arrest can be made on Sunday, unless after an escape.—See *Arrest*, in the DICTIONARY.

We come next to the PLEADINGS, or mutual statements, in legal form, of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence; these were formerly made, *viva voce*, by counsel in court, and minuted down by the chief clerk or prothonotary, but they are now set down, and delivered into the proper office in writing.

These over, the defendant puts in his excuse or PLEA. Pleas are of various kinds, consisting of any allegation by which the defendant endeavours to frustrate the suit; as by denying the jurisdiction of the court, the ability of the plaintiff to bring the action, or the amount of his demand.

A defendant may also plead the STATUTE OF LIMITATIONS, or the elapse of that period of time allowed, by the 21 Jac. I. c. 16, for the commencement of actions. Personal actions for trespass, debt on simple contract or for arrears of rent, must be commenced within six years after the cause of action; and actions of assault, menace, or imprisonment, within four year after the injury committed. All penal actions for forfeitures made by statute must be sued within two or one year. Actions on bills of exchange, attorneys' fees, and a demand for rent on *parol* lease, must be within six years.

But no statute has fixed any limitation to actions on contracts by *specialty*, yet even here some regulation has been felt to be necessary; and, therefore, where a party sues on a bond over which he has slumbered for twenty years, and there is no evidence of any *demand* of payment, or any payment of interest or acknowledgement

within that time, the court will direct the jury to presume that, in point of fact, it has long ago been paid, and to bring in a verdict accordingly, 6 *Mod.* 22, *Cowp.* 109.

The next, or fourth, stage of the action is the *issue*, or end of the pleadings, and is either upon matter of *law*, or matter of *fact*.

An issue upon matter of *law* is called a *demurrer*, in which the statement of facts is admitted; but it is denied that the law arising upon those facts is such as stated by the opposite party. An *issue of fact* is where the fact only, and not the law is disputed.

Here it may be proper to observe that, during the whole of these proceedings, from the time of the defendant's appearance, in obedience to the king's writ, it is necessary that both the parties, or their attorneys, be in court from day to day, till the final determination of the suit. For, if either party neglect to put in his declaration, plea, or the like, within the time allowed by the standing rules of the court, the plaintiff, if the omission be his, is said to be *nonsuited*, or not to follow and pursue his complaint, and he loses the benefit of his writ; or if the negligence be on the side of the defendant, judgment may be had against him for *default*.

An *issue of law*, or demurrer, is determined by the judges after hearing argument by counsel, on both sides. But an issue of fact takes up more form and preparation to settle it; for here the matter alleged must be solemnly investigated before a jury, by the questioning of witnesses, and whatever evidence can be adduced to establish the truth. This examination of facts is properly the **TRIAL BY JURY**, to which the preceding stages of a law-suit are only preliminary steps. Of the constitution, the mode of summoning and empanneling of juries, and also of the nature of evidence, we shall speak more at large hereafter; at present, we shall continue the progress of the suit to its termination.

The jury being sworn, the pleadings are opened to them by the counsel for the plaintiff, who states the nature of the action, and the evidence intended to be produced in its support: when the evidence of the plaintiff is gone through, the counsel for the defendant states

his case and supports it by evidence; and then the party who began is heard in reply.

Both sides having finished, the judge sums up the whole to the jury, omitting all superfluous circumstances; observing wherein the main question and principal issue lies; stating what evidence has been given to support it, with such remarks as he thinks necessary for their direction; and giving his opinion on matters of law arising upon that evidence. If, in his direction, the judge mistakes the law, either through inadvertence or design, the counsel on either side may require him publicly to seal a *bill of exceptions*, stating the point in which he is supposed to err: and this he is obliged to seal, or, if he refuse, the party may have a compulsory writ against him, commanding him to seal, if the fact alleged against him be truly stated.

Next follows the VERDICT, which, to be valid, must be unanimously agreed to by the jury, and delivered publicly in court. When a verdict will carry all the costs and it is doubtful from the evidence for which party it will be given, it is common for the judge to recommend, and the parties to consent, to withdraw a juror; then no verdict is given, and each party pays his own costs.

After the verdict follows the JUDGMENT of the court; judgment may, however, where there has been any defect in the trial, be suspended or arrested, for it cannot be entered till the next term after trial had, and that upon notice to the other party.

Causes for suspending judgment, by granting a *new trial*, may arise for want of due notice of trial; improper behaviour of the jury among themselves, or of the plaintiff towards them, by which their verdict is influenced; mis-direction of the judge; or exorbitant damages: for these and similar reasons a new trial will be awarded. But, if two juries agree in the same or similar verdict, a third trial is seldom conceded.

Between judgment and execution, an APPEAL may be made to a superior court, on the ground of some injustice or irregularity in the antecedent proceedings. The principal method of redress for erroneous judgment in matter of law is by writ of *error*, and this lies to the



same court in which judgment is given, if it be erroneous, in matter of *fact* ONLY; for error, in fact, is supposed to be the error of the jury, and correcting it is not the court reversing its own judgment.

To prevent, however, unnecessary delay in execution, the 3 Jac. I. c. 8. provides, if a writ of error be brought to reverse any judgment of an inferior court, where the damage is less than 10*l.* or of a superior court, after verdict, he that brings the writ, or is plaintiff in error must find substantial pledges of prosecution in double the sum recovered by the former judgment, and for all costs and damages. And further, to restrain frivolous writs of error, it is enacted, by the 6 Geo. IV. c. 96, that, in any personal action, execution shall not be delayed without the special order of the court, unless a recognizance, according to the statute of Jac. I. be first acknowledged.

If the judgment is not suspended or reversed, the result and last stage in the proceedings of a suit is the EXECUTION, or the putting the sentence of the law in force. Execution is of divers kinds. If the plaintiff obtain a verdict whereby the possession of land is awarded to him, a writ is directed to the sheriff, commanding him to give actual possession to the plaintiff; and the sheriff may justify breaking open doors if the possession is not peaceably yielded. But if quietly given up, the delivery of a twig or turf, or the ring of the door, in the name of *seizing*, or putting in possession, is sufficient.

Execution in actions where money is only recovered may be entered against the body of the defendant, or against his goods and chattels, or against all three, his body, land, and goods.

Every writ of execution must be sued out within a *year and a day* after the judgment is entered; otherwise the court concludes that the judgment is satisfied and extinct.

Before concluding, we must say something of costs, which form an inseparable and material adjunct to every law-suit. Costs, for the most part, are paid by the vanquished party, except in a few instances, privileged by statute or prescription. The king, except in some modern statutes, neither pays nor receives costs. Executors and administrators, suing in right of the deceased, are exempted; and persons who will swear themselves

not worth 5*l.* are to have writs and subpoenas gratis, and counsel and attorney assigned them without fee; and are excused from paying costs when plaintiffs, but shall suffer other punishment at the discretion of the court. Also, to prevent trifling actions for assault, battery, and trespass, it is enacted that, where the jury give *less* damages than 40*s.* the plaintiff shall be allowed no more costs than damages; unless the judge certify that an assault, or actual battery, was proved, or that in trespass it was wilful and malicious. In actions for slander, no sum under 40*s.* ever carries costs; and the defendant having justified or not makes no difference, and there is no certificate grantable for either party. But in actions for libel, crim. con. seduction, debt, contract, or consequential damage, the smallest damages carry *full costs*, whether the defendant has justified or not, unless the judge certifies in *favour of the defendant*; and, if he does, that deprives the plaintiff of his costs.

### CHAP. III.

#### *Criminal Process.*

HAVING traced the progress of a civil suit for the redress of private injuries, we come next to the mode of criminal procedure for the punishment of offences against the public: and of which the first step is the ARREST of the person of the delinquent. In criminal cases, every person is liable to arrest without distinction; but no man is to be arrested unless charged with such a crime as will at least justify holding him to bail when taken.

Warrants for arrest are usually issued on application to a justice of peace; they should set forth the time and place of making, and the cause for which they are made, and should be directed to the constable, or other peace officer, requiring him to bring the accused party either generally before any justice of the county, or only before the justice who grants the warrant. The warrant in the latter case is called a *special* warrant.

A general warrant to apprehend *all* persons suspected, without naming any person in particular, is illegal; so is a warrant to apprehend all persons guilty of a crime therein specified.

A warrant from the chief or other justice of the Court

of King's Bench extends all over the kingdom, and is dated "England," not Oxfordshire, Berks, or other particular county. But the warrant of a justice of peace in one county, as Yorkshire, must be backed, that is, signed by a justice of another, as Middlesex, before it can be executed there. So a warrant to apprehend an offender escaped from England into Ireland or Scotland must be endorsed by the local magistrate of the district in which he is found.

Certain officers, as a justice, sheriff, coroner, constable, or watchman, may arrest without warrant; and even a *private* person, who is present when a felony is committed, is bound by law to arrest the felon, on pain of fine and imprisonment, if he escape through the negligence of the stander-by.

When an offender is arrested, the justice before whom he is brought is bound immediately to inquire into the circumstances of the alleged crime, and to take the examination of the prisoner, and the evidence of those who bring him, in writing: if the charge appear wholly groundless, the prisoner must be forthwith discharged; otherwise, he must be COMMITTED, or give *bail* for his appearance, to answer the accusation.

To refuse or to delay to bail any person bailable is an offence against the statute as well as common law. Formerly, all felonies were bailable, but many offences are now excepted by statute. No justice of peace can bail upon a charge of treason, nor murder, nor arson, nor manslaughter, if the prisoner be clearly the slayer, and not barely suspected to be so. But in case of other felonies committed by persons of bad character, and of notorious thieves, the justices may bail or not, at their discretion.

The Court of King's Bench, or any judge thereof, in time of vacation, may bail for any crime whatever; but no one can claim this benefit as matter of right. And the House of Lords may bail a peer, committed on an indictment for murder.

If the party cannot obtain bail, he is committed to the county gaol, or house of correction, by the *mittimus* of the justice, or warrant under his hand and seal, containing the cause of his committal. No prisoner can be bailed for felony by less than two sureties; and the

amount of bail must depend on the rank of the accused and the nature of the offence.

The next step towards the punishment of an offender is the presenting an INDICTMENT, or written accusation, against him to the *grand jury*. The grand jury is summoned by the sheriff, consisting of not fewer than twelve, nor more than twenty-three of the principal men of the county ; who are previously instructed in the subject of their inquiries by a charge from the bench. They then withdraw to sit and receive the indictments which are preferred to them ; and they are only to hear evidence on behalf of the prosecution.

When they have heard the evidence, if they think it a groundless accusation, they write on the back of the bill, *Not a true bill* ; or, which is the better way, *Not found* ; and then the party is discharged. But a fresh bill may afterwards be preferred to a subsequent grand jury. If they be satisfied of the truth of the accusation, they endorse upon it, *A true bill*, and the party stands indicted. The indictment is then said to be found ; but to find a bill, at least twelve of the jury must concur. So that no person can be convicted of a capital charge without the unanimous voice of twenty-four of his neighbours and equals ; that is, by twelve at least of the grand jury first assenting to the accusation ; and afterwards by the whole of the petit jury, of twelve more, finding him guilty.

There is another mode of carrying on a criminal process, without the intervention of a grand jury ; namely, by INFORMATION in the name of the king, or jointly at the suit of the king and that of a subject. The latter is usually brought upon penal statutes, and is a sort of *quittam* action, and carried on only by a criminal instead of a civil process. Informations in the name of the king, are filed, *ex officio*, by the attorney-general, and are directed against such offenders as tend to disturb and annoy the government, and any delay in punishing which might be dangerous.

Prosecutions by the crown, for misdemeanors, whether by information or indictment, are now laid under certain regulations, by the 60 Geo. III. & 1 Geo. IV.

c. 4; which provides that, in such cases, the court shall, if required, order a copy of the information or indictment to be delivered, after appearance, free of expense to the defendant; and if the attorney or solicitor general shall not bring the issue to trial within twelve calendar months after the plea of not guilty pleaded, the court may, on the defendant's application, of which twenty days' notice must be given to the attorney or solicitor general, allow the defendant to bring on the trial.

By 7 Geo. IV. c. 64, s. 19, no indictment or information shall be abated by any dilatory plea of *misnomer* or *wrong addition*, if the court be satisfied of the truth of such plea; but, in such case, the court shall forthwith cause the indictment or information to be amended, and call upon the accused to plead thereto, as if no such dilatory plea had been pleaded.

Still further to guard against the escape of offenders, the 21st & 22d sections enact that no indictment after verdict shall be vitiated by reason of any *technical error* in the phraseology of the indictment; nor shall it be sufficient to stay or reverse judgment that the jury process has been awarded to a wrong officer, nor for any misnomer or misdescription of the officer or jurors, nor because any person has served upon the jury who has not been returned by the sheriff or other officer.

To continue the process; whether the procedure be by the previous finding of a grand jury or by information, the next step in the prosecution is the **ARRAIGNMENT** of the prisoner, or the calling him to the bar of the court, to answer the charge against him. When he is brought to the bar, which must be without irons or bonds, unless there be danger of an escape, he is called upon by name to hold up his hand. By holding up his hand he admits himself to be of the name by which he is called.

The indictment is then read to him; after which he is asked whether he be guilty or not guilty.

The prisoner usually answers *Guilty* or *Not Guilty*; upon a simple and plain confession of guilt, the court has nothing to do but to award judgment; but it is generally backward in receiving and recording such confession; and it generally counsels the prisoner to retract it, and plead to the indictment.

When the prisoner has pleaded *Not Guilty*, he is deemed to have put himself on his country for trial, and the court may order a jury for the trial of such person accordingly. If the accused refuse to plead, or stand mute, the court, by 7 & 8 Geo. IV. c. 28, may direct the proper officer to enter a plea of *Not Guilty*, on his behalf, which has the same effect as if he had actually pleaded.

When the jury is sworn, if it be a cause of any consequence, the indictment is usually opened, and the evidence arranged, examined, and enforced by the counsel for the crown or prosecution; but it is a settled rule of common law that no counsel shall be allowed a prisoner upon his trial for any *capital* crime, unless some point of law shall arise proper to be debated. This anomaly in criminal jurisprudence an unsuccessful attempt was made in the session of parliament for 1824 to remove, and the judges are so sensible of the hardship in practice, that they seldom scruple to allow a prisoner's counsel to stand by and instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact.

When the evidence on both sides is closed, the jury cannot be discharged till they have given their verdict, but are to consider of it, and deliver it in with the same form as upon civil causes. If they find the prisoner not guilty, he is then discharged; but if they find him guilty, he is said to be CONVICTED of the crime whereof he stands indicted.

Upon conviction, two collateral circumstances immediately arise:—1. On conviction, or even upon acquittal, when there was reasonable ground to prosecute, the reasonable expenses of the prosecutor are to be allowed out of the county stock, if he petition the judge for that purpose. Also, persons appearing upon recognizance or subpoena, to give evidence, are entitled to their expenses, and a compensation for loss of time. 2. On a conviction of larceny, the prosecutor shall have restitution of his goods, which the judge usually orders to be immediately carried into effect with respect to the goods brought into court. It is only by the 7 Geo. IV. c. 64, that these provisions have been extended to prosecutions for *misdemeanor*; prior to this act, prosecutors were only entitled to their expenses in cases of larceny or felony.

The next stage of a criminal process is the JUDGMENT. Upon a capital charge, when a jury have brought in their verdict of guilty, in the presence of the prisoner, he is either immediately or at a convenient time after, asked if he has any thing to offer why judgment should not be awarded against him; after which, if nothing can be urged in arrest of judgment, the judge pronounces sentence.

Of the different punishments annexed to crimes we shall have occasion to speak hereafter; some are capital, and consist generally in being hanged. Others impose imprisonment, transportation, forfeiture of land or moveables, disability from holding certain offices, or pecuniary penalties. Lastly, some punishments are chiefly ignominious, though mostly accompanied with some degree of corporal pain; as the pillory, whipping, the stocks, or hard labour in the House of Correction.

The public and private whipping of females is abolished by the 1 Geo. IV. c. 57; in lieu of which, confinement to hard labour for not exceeding six months, nor less than one, or solitary confinement for not exceeding seven days at any one time, is to be inflicted. The burning of women for the offence of petit treason was abolished by 30 Geo. III. c. 48.

And by the 56 Geo. III. c. 138, the punishment of the pillory is abolished, except for perjury and subornation of perjury, and fine or imprisonment, or both, substituted.

The criminal code is further mitigated by 4 Geo. IV. c. 48, which enacts that in various felonies to which capital punishment is annexed, and when, from particular circumstances, the judges are of opinion that the offender is a proper subject for mercy, they may, instead of passing the judgment of death, merely order it to be entered on the record.

In all felonies, too, that part of the punishment which consisted of burning the culprit in the hand is remitted by the 6 Geo. IV. c. 25. Lastly, the 7 & 8 Geo. IV. c. 28, more strictly defines capital felonies, by enacting, that no person convicted of felony shall suffer death, unless it be for some felony which was excluded from the benefit of clergy, before or on the first day of the present session (February 8, 1827) of parliament, or made so punishable by the statute subsequent to that day.

We come next to the consequence of passing sentence of death ; namely, **ATTAINDER**, by which the offender is stigmatized so that he is no longer of any credit or reputation ; he cannot be a witness in any court, nor is he admissible to the civil functions of other men : he is, also, liable to *forfeiture* and *corruption of blood*.

By attainder in high treason a man forfeits all the land and tenements he had at the time the offence was committed, or which he may subsequently acquire. But if a traitor die before judgment is pronounced, or be killed in open rebellion, then he cannot be attainted, and his land is saved from forfeiture.

*Forfeiture* of goods and chattels accrues in treason or felony, whether clergyable or not ; in self murder, and petit larceny. Also, for flight on an accusation of treason, felony, or petit larceny, whether the accused be found guilty or acquitted ; if the jury find the flight, the party shall forfeit his goods and chattels.

Attainder also makes *corruption of blood*, upwards and downwards ; so that an attainted person can neither inherit lands from his predecessor nor retain those he is already in possession of, nor transmit them by descent to his posterity ; but they escheat to the lord of the fee, subject, in case of treason, to the king's superior claim of forfeiture. But by a late act, the 53 Geo. III. c. 145, corruption of blood is limited to the offence of high and petit treason and murder.

After adverting to the consequences of sentence of death, we shall continue the criminal procedure. If there be no reversal of judgment, by writ of error, or otherwise, the only remaining way of avoiding the execution of the sentence is by a **REPRIEVE** or a **PARDON**.

A **REPRIEVE** is merely a suspension of the execution, and may be either before or after judgment. If the judge is not satisfied with the verdict, or the evidence is suspicious, or the indictment is insufficient ; or if it be a small felony, or any favourable circumstance appears in the criminal's character, he may grant time to apply to the crown for entering an absolute or conditional pardon. In this case, the judge sends a memorial or certificate to the king, directed to the secretary of state's office, sta-



ting that, from favourable circumstances appearing at the trial, he recommends him to his majesty's mercy, and to a pardon, upon condition of transportation or some slight punishment.

Reprieves may, also, arise from natural causes, as where a woman is capitally convicted and pleads her pregnancy. In this case, the judge directs a jury of matrons to inquire into the fact, and, if they bring in their verdict *quick with child*, (for, unless the child be alive in the womb, it is not sufficient,) the execution is stayed, either till she be delivered or proves, by the course of nature, not to have been with child at all. But if she prove with child a second time, she cannot have the benefit of this reprieve; for she may be executed before the child quickens, and the law will not be evaded by her incontinence.

Another cause of reprieve is, if the offender become *insane* between the judgment and execution; for, though a man be sane when he commits a crime, yet, if he become insane after, he shall not be indicted; if after indictment, he shall not be convicted; if after conviction, he shall not receive judgment; if after judgment, he shall not be ordered for execution.

The power of PARDON is vested in the king, and may be granted for all offences against the crown and the public. But the king cannot pardon for civil injuries, where the interest of individuals is principally concerned; nor can he pardon a common nuisance while it remains unabated, though he may afterwards remit the fine; nor can he pardon an offence against a penal statute after information brought, for then the informer has acquired a private property in his share of the penalty. Neither can a pardon from the crown be pleaded against a parliamentary impeachment.

A pardon must be either under the great seal, or, according to the 7 & 8 Geo. IV. c. 28, by warrant under the royal sign manual, countersigned by one of the principal secretaries of state. And, by 30 Geo. III. c. 47, his majesty may authorize the governor of any place to which convicts are transported, to remit, either absolutely or conditionally, the whole or any part of their term of transportation, and the names of such convicts

are to be inserted in the next general pardon which may pass the great seal.

A pardon may be *conditional*; as capital punishment may be commuted to hard labour, or transportation for life, or a term of years.

The last stage of criminal process is EXECUTION, which must, in all cases, be performed by the sheriff or his deputy. The warrant for execution was anciently by precept, under the hand and seal of the judge, but the usage now is for the judge to sign the calendar or list of all the prisoners' names, with their separate punishments in the margin: as, for a capital felony, it is written opposite the culprit's name, *Let him be hanged by the neck!*

The forms observed on this important occasion are briefly these. At the end of the assizes, the clerk of the assize makes out in writing four lists of all the prisoners, with separate columns, containing their crimes, verdicts, and sentences, leaving a blank column, in which, if the judge has reason to vary the course of the law, he writes, opposite the names of the capital convicts, to be *reprieved, respited, transported, &c.* These four calendars, being first carefully compared together by the judge and the clerk of assize, are signed by them, and one is given to the sheriff, one to the gaoler, and the judge and clerk of assize each keep another. This forms the only warrant of the sheriff for the execution, and, if he afterwards receives no special order from the judge, he executes the judgment of the law in the usual manner, agreeably to the directions of his calendar. The forms observed vary a little in some counties; as, in Lancashire no calendar is left with the gaoler, but one is sent to the secretary of state.

In London, the recorder, after reporting to the king in person the cases of the several prisoners, and receiving the royal assent that the law shall take its course, issues his warrant to the sheriffs, directing them to do execution on the day and place named. In the Court of King's Bench, a rule is made for the execution, either specifying the time and place, or leaving it to the direction of the sheriff. But, throughout the kingdom, by the 25 Geo. II. c. 37, it is enacted that, in case of murder, execution shall take place the next day but one after sentence passed; and,

as judgment is usually passed on Friday, so that Sunday intervenes, the sentence is executed on the Monday.

The sheriff cannot alter the mode of punishment, by substituting one kind of death for another, without being guilty of felony. It is held by Sir Edward Coke and Sir Matthew Hale, that even the king cannot change the punishment by altering the hanging into beheading, though, when beheading is part of the sentence, he may remit the rest.

If, upon judgment to be hanged till dead, the criminal be not thoroughly killed, but revives, the sheriff must hang him again, for the former hanging was no execution.

#### CHAP. IV.

#### *Process in Chancery—Summary Conviction—Recognizance.*

BESIDES the general modes of proceeding in civil and criminal cases, described in the two last chapters, there are other forms of judicial process which it may be proper briefly to mention before concluding our outlines of administrative justice.

##### I. PROCESS IN CHANCERY.

The commencement of a suit in chancery is by preferring a bill to the court, and is generally for *relief*, for *discovery*, or for an *injunction*. It is in the style of a petition, setting forth the circumstances of the case, and praying relief from the lord chancellor, as your "orator (such is the usual phraseology of the bill) is wholly without remedy at the common law." If an injunction be prayed to stay waste, or some injuries of an urgent nature, then, upon the filing of the bill in the Six Clerks' Office, and a proper case, supported by affidavits, the court will grant an injunction immediately, to continue till the defendant has put in his answer; and, when the answer comes in, whether it shall be then dissolved or continued till the hearing of the case is determined by the court.

Upon common bills, as soon as they are filed, process of subpoena is taken out, commanding the defendant to appear to answer the bill, on pain of 100*l*. If the defendant do not appear within the time allowed, he is said to be in *contempt*, and may be committed to the Fleet, or other prison, till he put in his appearance or answer.

An answer is the most usual defence made to a bill: it is given upon oath, but, when there are amicable defendants, an answer is usually taken without oath, by consent of the plaintiff. Both the bill and answer must be signed by counsel, to prevent the introduction of improper or irrelevant matter. A defendant cannot pray any thing in his answer but to be dismissed the court; if he has any relief to pray against the plaintiff, he must do it by an original bill of his own, called a *cross bill*.

If the plaintiff find sufficient matter admitted in the defendant's answer to ground a decree upon, he may proceed to the *hearing*, of which the method is usually this: the parties appearing by their counsel, the plaintiff's bill is first briefly stated, and the defendant's answer also, by the junior counsel on each side; after which, the plaintiff's leading counsel states the case, the matter in issue, and the points of equity arising thereupon; then such depositions as are called for by the plaintiff are read by one of the six clerks, as is, also, such part of the defendant's answer as the plaintiff thinks material; after this, the rest of the counsel for the plaintiff make their observations and arguments; next, the defendant's counsel go through the same process for him, except that they may not read any part of his answer; and the counsel for plaintiff are heard in reply.

When all are heard, the court pronounces its DECREE, which is either *interlocutory* or *final*. It seldom happens that the first decree is final or concludes the cause. Matters of fact are often directed to be tried by a jury, at the bar of the King's Bench, or at the assizes; and questions of mere law are submitted to the opinion of the judges. Frequently, long accounts are to be settled, incumbrances and debts to be inquired into, and a hundred little facts to be cleared up, before the cause can be wound up. These are referred to a master in chancery to examine, which examination frequently lasts for years; and then he is to report the facts, as they appear to him, to the court. This report may be excepted to, disproved, and over-ruled; or, otherwise, is confirmed and made absolute by the order of the court.

When all issues are tried and settled, and all refer-

ences to the master ended, the cause is again brought to a hearing, upon the matter of equity reserved, and a final decree is made; the performance of which, if necessary, is enforced by commitment of the person, or sequestration of the defendant's estate. If, by the decree, either party thinks himself aggrieved, he may petition the chancellor for a re-hearing, whether it was heard before his lordship, the vice-chancellor, or the master of the rolls. Every petition for a re-hearing must be signed by two counsel, usually such as have been concerned in the cause, certifying that they conceive the cause proper to be re-heard: but, after the decree is once signed and enrolled, it cannot be re-heard or rectified, but by bill of review, or by appeal to the House of Lords. A bill of review cannot be had after an interval of twenty years. —*Mitf. Pl. 71.*

A bill may be dismissed for want of prosecution, which is in the nature of a nonsuit at law, if the plaintiff suffer three terms to elapse without moving forward in the cause. Or, if the defendant subpoenaed to hear judgment fail to attend, a decree will be made against him for default, which will be final, unless he pay the plaintiff's costs of attendance, and shows good cause to the contrary on a day appointed by the court.

With respect to the costs to be given to either party, they are not held to be a matter of right, but merely discretionary, according to the circumstances of the case, as they appear more or less favourable to the vanquished party.

## II. SUMMARY CONVICTIONS.

By summary proceedings are principally meant such as are directed by several acts of parliament for the conviction of offenders and the infliction of penalties, created by those acts of parliament. In these there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the statute has appointed for his judge.

Of this summary nature are all trials of offences and frauds contrary to the laws of the excise, and other branches of the revenue, which are inquired into by the commissioners of the respective revenue departments, or by justices of the peace in the county where they occur.

Another extensive branch of summary process is that before justices of the peace, in order to inflict divers petty pecuniary fines and corporal penalties, denounced by act of parliament for any disorderly offences ; such as poaching, malicious mischief, common swearing, drunkenness, vagrancy, idleness, and a vast variety of others, all of which formerly used to be punished by the verdict of a jury in the court leet.

The process is extremely brief : after summoning the offender, the magistrate proceeds to examine one or more witnesses, as the statute may require, upon oath : he then makes his conviction in writing, upon which he usually issues his warrant, either to apprehend the party, in case corporal punishment is to be inflicted on him, or else to levy the penalty incurred by distress and sale of goods.

By the 18 Geo. III. c. 19, justices out of session are also empowered to award *costs* against either the person complaining or the person against whom the complaint is made ; which, if not paid, may be levied by distress ; or, if no distress can be had, such person may be committed to hard labour, for any time not less than ten days, or more than a month.

From these convictions, there is no *appeal*, unless it be expressly given by the statute ; but the party has in general a right to a *certiorari* to remove the conviction into the Court of King's Bench. When an appeal is given, the magistrates should make known to the convicted party his right to appeal ; but, if he decline appealing, they are not required to inform him of the necessary steps to be taken to appeal. Upon an appeal, the magistrates are bound to receive any fresh evidence, though not tendered on the former hearing, 3 *M. & S.* 133.

The defendant is entitled to require a copy of the conviction from the convicting magistrate.

When an appeal is allowed, the conditions or directions respecting such appeal must be strictly complied with ; and the appeal must be to the next quarter session of the jurisdiction in which the conviction takes place, unless otherwise specially appointed by the statute giving the right of appeal.

These summary proceedings are unknown to the com-

mon law, and appear to have arisen from the multiplicity of our fiscal regulations, and the expense and delay of bringing a number of petty offences before the regular tribunals of civil and criminal judicature.

### III. RECOGNIZANCE.

The law has provided a method for the prevention of crimes as well as punishing them when committed. This preventive justice consists in obliging persons whom there is reason to suspect of future misdeeds, to enter into *recognizance* to keep the peace, or be of good behaviour.

A recognizance is an obligation, with one or more sureties, entered into before a court of record, or magistrate duly authorized, to do some specified act, as to appear at the sessions, keep the peace, or the like. In default, the recognizance is forfeited to the king, and the party and his sureties may be sued for the sums in which they are respectively bound.

Any justice of peace may demand security at their own discretion, or it may be granted at the request of a private individual, upon due cause shown. Wives may demand it against their husbands, or husbands, if necessary, against their wives.

Justices may bind a person over for offences against good manners, as well as against the peace; as for haunting bawdy-houses, or keeping women of bad fame in his house, or for words tending to scandalize the government, or in abuse of the officers of justice. Also, justices may bind over all night-walkers, eaves-droppers, keepers of suspicious company, reputed thieves, common drunkards, putative fathers of bastards, cheats, vagrants, and other suspicious and disorderly characters.

It is even held, though of dubious authority, that justices may demand bail of persons charged with libel before the indictment is found, *Butt v. Conant*, 1 B. & B. 548.

With respect to the exhibition of *articles of the peace*, there ought to be a reasonable foundation on the face of the articles to induce a fear of personal danger before sureties of the peace will be required, 13 E. R. 172. The court may require bail for such a length of time as

they shall deem necessary for the preservation of the peace, and are not confined to a twelvemonth, *Rex. v. Bowes*, 1 T. R. 696.

A recognizance may be forfeited by the commission of any of those acts which the party is bound to refrain from: or it may be discharged either by the demise of the king, to whom the recognizance is made, or by the death of the principal party; or by the order of the court to which it is certified; or, in case he at whose request it is granted, if granted upon a private account, will release it, or does not make his appearance to pray that it may be continued.

The ESTREATING, or forfeiture to the crown of recognizances to prosecute, or give evidence, in various cases of legal procedure, was often productive of great hardship, till the passing of the *Act for Improving the Administration of Criminal Justice*, by which the severity of the former practice is mitigated.

By 7 Geo. IV. c. 64, s. 31, it is provided that, in every case, where a person, or his surety, is bound by recognizance for his appearance, to give evidence, or prosecute in cases of felony or misdemeanor, or to answer any common assault, or to articles of the peace, or to abide an order in bastardy, shall make a default, the officer of the estreats is required to make out a list of such defaulters, specifying their names, professions, &c. and whether the ends of justice have been *defeated* by such defaults; and no recognizance is to be estreated without the written order of the justice, recorder, corporate officer, chairman, or justices of peace, before whom such list must be previously submitted.

## CHAP. V.

### *Juries.*

THE trial by jury is justly deemed one of the most ancient and salutary institutions which has descended from a remote period, for the preservation of the persons and properties of the people. By an act of the session of 1825, introduced by Mr. Peel, intituled, *An Act for Consolidating and Amending the Laws relative to Jurors and Juries*, several abuses which had crept into the



jury-system were removed, and the institution placed on such a basis as better to insure the fair and independent discharge of its judicial functions. In the course of the chapter, we shall be careful to incorporate the provisions of the new law, as well as to retain the customs and practices not affected by the late statute, and thereby exhibit the present state and constitution of juries.

The primary objects of the New Jury Act were, *first*, to consolidate, simplify, and amend the existing law relative to the qualification, summoning, and formation of juries. *Secondly*, to increase the number of persons qualified to serve on juries; for, as the population and wealth of the country augment, civil and criminal suits necessarily multiply; it became desirable, therefore, to lighten the duties of those who are liable to be called from their private pursuits to aid the administration of justice. *Thirdly*, and lastly, to remove the complaints which had long been urged on the partial and defective mode of striking special juries.

#### JURY LISTS.

The New Jury Act, the 6 Geo. IV. c. 50, came into operation the 1st January, 1826, and according to which the churchwardens and overseers of the poor are required to make out alphabetical lists, before the 1st of September, in each year, of all men residing in their respective parishes and townships qualified to serve on juries, setting forth, at length, their christian and surname, the place of abode, the title, profession, or business, and the nature of the qualification of each individual.

Copies of these lists, on the three first Sundays in September, are to be affixed on the principal door of every church, chapel, or other public place of religious worship, with a notice subjoined that all appeals will be heard at the petty session, to be held within the last seven days of September in each year, mentioning the day and place of holding such session.

For the purpose of correcting and completing the jury-lists, the churchwardens and overseers may, between the 1st of July and the 1st of October, by application

to any collector or assessor of taxes, or other officer, inspect any duplicate or assessment, and thence take the names of jurors.

The list so prepared is to be kept by the clerk of the peace, and to be copied into a book, which is to be delivered to the sheriff, and to be called "*The Jurors' Book.*" This book, which is to be used for one year, commencing the 1st of January, every sheriff is to deliver to his successor in office; and from it the sheriffs, coroners, and other officers are to select the jurors.

Penalties are imposed on any of the officers neglecting or refusing to discharge their respective duties in the formation of the jury-lists.

QUALIFICATIONS OF JURORS.

With the exceptions hereafter specified, the following persons are now qualified to serve on juries, for the trial of all issues, civil and criminal, in the king's courts, at Westminster, and at the assizes, and on grand and petty juries in the courts and sessions of the peace, in the county, riding, or division, where they respectively reside.

1. Every man between the age of twenty-one and sixty years, residing in England, having, in his own name, or in trust, 10*l.* per annum, of clear yearly income, arising from lands and tenements, whether freehold, copyhold, customary tenure, or ancient demesne; or rents issuing thereout in fee-simple, fee-tail, either for his own or other persons' life; or such income or rents jointly issuing, amounting together, to the clear yearly value of 10*l.*

2. Every man having 20*l.* a-year clear, from lands or tenements, held, *by lease*, for twenty-one years or upwards, or for any term determinable on any life or lives.

3. Householders assessed to the poor-rate, or to the inhabited house-duty, in the county of Middlesex, on a value of 30*l.*; in any other county, 20*l.*

Lastly, persons occupying any house containing not less than fifteen windows.

Persons residing in Wales are eligible to serve on juries who are qualified to the extent of *three-fifths* of any of the foregoing qualifications.

## EXEMPTIONS.

The new law has extended the exemptions, as well as the qualifications of jurors. The following are exempt from serving on all juries and inquests whatever:—

Peers, judges, counsellors, attorneys, proctors, coroners, gaolers, and keepers of houses of correction; clergymen in holy orders; Roman Catholic priests, having taken the oaths and made the declarations required by law; dissenting ministers, whose places of worship are registered, and who follow no secular occupation, except that of schoolmaster; officers of the army and navy on full pay; physicians, surgeons, and apothecaries, duly licensed and actually practising; servants of the royal household; pilots licensed, and masters in the buoy or light service; officers in the customs and excise; officers of courts of justice, actually exercising the duties of their offices; sheriffs' officers, high constables, and parish clerks.

It was also determined in the session of 1826, that members of the house of commons are privileged from serving on juries while attending their duties in parliament, *Parl. Paper, No. 71*.

No man not being a natural-born subject is qualified to serve on juries or inquests, except in the case of aliens; nor any person convicted of any infamous crime, unless he have obtained a free pardon; nor any man under sentence of outlawry or excommunication.

No justice shall serve on any jury at the sessions for the jurisdiction of which he is a justice.

After serving, and obtaining the sheriff's certificate, persons are free from again serving on juries, for certain periods; in the counties palatine, or the great sessions in Wales, or in Hereford, Cambridge, Huntingdon, or Rutland, for one year; in the county of York for four years; in any other county, except Middlesex, two years.

Sheriffs are required to register the service of jurors at the assizes, and to give certificates of service on payment of one shilling; but this regulation does not extend to grand or special jurymen.

No one is qualified to serve on a sheriff's or coroner's inquest, upon a *writ of inquiry*, who is not qualified to

serve on a *nisi prius* jury ; but this does not extend to inquests taken *ex-officio* ; nor to any city, borough, liberty, or town corporate, in which the usual method must be observed.

#### SUMMONING OF JURORS.

The summons of every common juror must be, at least, ten days before he has to attend, and of every special juror, three days before he has to attend ; but this does not extend to the city of London nor the county of Middlesex.

The *panel*, which is an oblong piece of parchment, must, for the trial of causes, contain the names, alphabetically arranged, with the places of abode, and additions of a competent number of jurors ; which number of jurors, in any court, must not be less than forty-eight, nor more than seventy two, unless by the direction of the judges who are empowered to direct a greater or lesser number.

Judges may direct the sheriff to summon not more than 144 jurors to attend the assizes on their respective circuits, to serve indiscriminately on civil and criminal trials ; which jurors are to be divided into two sets, one of which is to attend at the beginning, the other at the end of the assizes ; the sheriff informing each juror, in his summons, to which set he belongs, and at what time his attendance will be required. Jurors not attending, without reasonable excuse, when summoned, may be fined by the court.

A copy of the panel is to be kept in the sheriff's office, for the inspection of the parties and their attorneys, who are entitled to inspect the same without fee or reward.

#### THE BALLOT.

The names of the jurors summoned, being written on tickets, are put into a box, and when each cause is called, twelve of the persons whose names are first drawn are sworn on the jury, unless absent, challenged, or excused, or unless a previous view of the subject in issue shall have been thought necessary by the court ; and then the jurors who have had the view shall be sworn prior to any other jurors.

The oath of a juror is "well and truly to try the issue between the parties, and a true verdict give, according to the evidence." The same jury may try several issues, unless objected to by the judge or either of the parties; in that case, a fresh jury is drawn from the box, from the remaining names on the panel.

#### CHALLENGE OF JURORS.

On the jurors' names being called, they may be challenged or objected to by the parties, as improper persons to form the jury. Challenges are of two kinds; challenge to the *array*, and challenges to the *poll*.

Challenge to the *array* is an exception at once to the whole panel, which may be on the ground of partiality, or default in the sheriff, or his deputy, who arrayed the panel. Or the array may be challenged because one of the parties is an alien, so entitled to a jury of one-half foreigners.

Challenges to the *poll* are exceptions to particular individuals, and may be made on several accounts. 1. That a juror is an alien. 2. That he is not duly qualified according to the statute. 3. That he has been an arbitrator in the cause, has received money for his verdict, or related to or employed by one of the parties. 4. That he is infamous or degraded in law. 5. Challenges may be made to the *favour*; as where the party has no direct cause of challenge, but objects only to some suspicious circumstance, as acquaintance or the like, the validity of which must be determined by *triors*, or two indifferent persons chosen by the court, whose office is to decide on the impartiality of the juror objected to. And, lastly, a juror may challenge himself, on the ground of his title, office, profession, or some other of the causes of exemption before enumerated.

No challenge can now be made to the array, as formerly, on account of a *knight* not being returned on the panel: nor can an alien be challenged on the trial of a foreigner for want of a freehold qualification.

In trials of treason or felony, a juror may be challenged by the prisoner without assigning any cause, which is called a *peremptory challenge*; and is an indul-

gence granted the accused in tenderness to those sudden impressions and unaccountable prejudices which persons are apt to conceive on the bare look and gesture of a stranger ; but to such a capricious and undefined ground of objection some reasonable limit must be assigned. This is settled by the common law at thirty-five, that is one under the number of three full juries. And, by the New Jury Act, no person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of *twenty* ; but, in cases of treason, the prisoner is still allowed thirty-five peremptory challenges.

If, by means of challenge, or other cause, a sufficient number of unexceptional jurors do not appear at the trial, either party may pray a *tales* ; in that case, the sheriff adds to the names on the panel such proper persons as are present in court, or may be first found ; and the persons so added are subject to the same challenges as the principal jurors.

#### SPECIAL JURIES.

Special juries were originally introduced in trials at law when the causes were of too great nicety for the adjudication of ordinary freeholders ; or where the sheriff was suspected of partiality, though not on such valid ground as to warrant an exception to him. Either party is entitled, upon motion in court, to have a special jury in the trial of any cause, whether civil or criminal, or on any penal statute, excepting only indictments for treason and felony ; the party demanding the special jury paying the extra fees and expense, unless the judge certifies on the record that the cause required such special jury.

By the *New Jury Act*, every man described in the jurors' book as an esquire, or person of higher degree, or as a banker or merchant, is qualified to serve on special juries ; and the sheriff is bound to enter all such persons, in alphabetical order, in a separate list, to be subjoined to the jurors' book, to be called "The Special Jurors' List ;" and shall prefix to every name its proper number in regular arithmetical series, which numbers, marked on tickets, shall be put in a box.

When a special jury is awarded, the parties, with their attorneys, if they choose to attend, shall wait on the proper officer, who, having shaken the numbers in the box together, shall draw out forty eight of the numbers one after another, referring each number as drawn to the corresponding number in the Special Jurors' List, and reading aloud the name designated by such number. If either party, or his attorney, object to the name drawn as incapacitated, and prove the same to the satisfaction of the officer, the name is set aside, and another number drawn; and so on till the number forty-eight is completed. But, if the forty-eight names cannot be obtained from the Special Jurors' List, the officer shall fairly and indifferently take such a number of names from the common juror's list as will make up the full number forty-eight. The officer then furnishes a list of the names, places of abode, and additions of the jurors, to each party, who respectively strike off twelve, and the remaining twenty-four are returned upon the panel.

If any of the special jurors are absent on the trial, the talesmen, to complete the number, must be taken from the common jury panel. No tales can be prayed where all the special jurors are absent.

The old method of nominating a special jury may be followed by the mutual consent of the parties.

Special jurors may receive such a sum of money as the judge shall think reasonable, not exceeding *one guinea*, except in causes where a *view* is directed. All fees heretofore taken are continued by the new act.

A rule for a special jury must be served sufficiently early to enable the opposite party to strike the jury before the day of trial; and, therefore, when the rule was served at six o'clock the evening preceding the day fixed for the trial, it was held the case was properly tried by a common jury, *Guth v. Honegman*, 2 B. & A. 400.

The same special jury, by consent of parties, may try any number of causes. But the court may, on application from any man who has served, discharge him from serving upon any other special jury during the same assize or session.

## LONDON AND MIDDLESEX JURIES.

The provisions of the 6 Geo. IV. in respect of preparing the panel, do not extend to any liberties, cities, boroughs, or towns corporate, possessing civil or criminal jurisdiction; in such places, the sheriff, bailiff, or other officer, having the return of juries, prepares his panel as formerly.

In London and Westminster, every householder, or occupier of a shop, warehouse, counting-house, chambers, or office for the purpose of trade, having lands, tenements, or personal estate, of the value of 100*l.* is qualified to serve on juries.

The list of qualified persons, resident in each ward of the city of London, must be made out with the proper quality or addition, and the place of abode of each man, by the parties hitherto accustomed to make out such lists; the shop, warehouse, counting-house, chambers, or office of each person so qualified, to be deemed the place of abode for the purposes of the act.

Abbott, C. J. decided, provided a person's family is domiciled in the city, though he is not in trade, but holds a public office, nor a householder, occupying only part of a house, he is qualified to serve on a special jury in London, *K. B. Guildhall, Jan. 9, 1827.*

Six days are allowed between summons and appearance in London and Middlesex.

The sheriff of the city of London cannot return any juror to serve in the courts at Westminster.

Owing to the small number of freeholders in the county of Middlesex, and the frequent occasions for juries at Westminster, in that county, it was enacted, by the 4 Geo. II. c. 9, that a leaseholder for any number of years, if the improved annual value of his lease be 50*l.* above all ground-rents and other reservations, shall be liable to serve on juries for that county. But, by a previous statute, confirmed by the New Jury Act, the inhabitants of Westminster are exempted from serving on any jury at the sessions of the peace for the county of Middlesex.

Persons summoned to serve on juries in any of the inferior courts of record in London, or in any other



liberty, city, borough, or town, not attending, shall forfeit not more than 40s. nor less than 20s. unless the court be satisfied with the cause of absence. Such fine is leviable by distress and sale.

No cause can be tried by a special jury in London or Middlesex unless the rule for such special jury be served, and the cause marked in the marshall's book as a special jury cause, on or before the day preceding the adjournment-day, in Middlesex or London respectively. *Reg. Gen. H. T.* 44.

In the Common Pleas, the rule must be served and the cause marked in the marshall's book, two days preceding the adjournment day, 4 *Taunton*, 601.

No person is liable to serve on juries at any session of *nisi prius*, or gaol delivery in Middlesex, who has the sheriff's certificate of service at either of such sessions, for either of the two terms or vacations next preceding.

#### DUTIES OF JURORS.

After a juror is sworn, he must not go from the box till the evidence is given, for any cause whatever, without leave of the court; and, with leave, he must have a keeper with him.

If, after they have withdrawn from the box to consider their verdict, they have meat, drink, fire, or candle, without consent of the court, and before verdict, they are fineable; and if at the charge of him for whom they afterwards find, it will set aside the verdict: also, if they speak with either of the parties, or their agents, after they retire from the box; or if, to prevent dispute, they cast lots for whom they shall find: any of those circumstances will entirely vitiate the verdict, and they are finable.

When the jury have left the box, no new evidence can be adduced, nor can they recall a witness and make him repeat his evidence; for though he give no more evidence than he had given in court, the verdict will not be allowed, *Cro. Eliz.* 189. But they may have a witness recalled to repeat his evidence in open court.

The jury cannot retire with any writing not given in evidence in open court.

The jury are allowed to judge of the meaning of *mer-*

*cantile phrases* in the letters of merchants, *Lucas v. Groning*, 7 Taunt. 164.

If, after the charge and evidence given on a capital offence, one of the jurors become suddenly ill, the court may discharge the jury, and charge a fresh one with the prisoner, and convict him, *King v. Edward*, 4 Taunt. 309.

When a *criminal* trial runs to such a length as it cannot be concluded in one day, the court, by its own authority, may adjourn till the next morning; but the jury must be somewhere kept together, that they may have no communication but with each other, 6 *T. R.* 527. In *civil* cases, a jury may separate; but after the judge has summed up they cannot, 2 *Bar. & Ald.* 462.

If the jury do not agree in their verdict, in cases of life and limb, before the judges are about to leave the town, though they are not to be threatened or imprisoned, the judges are not bound to wait for them, but may carry them round the circuit.

A verdict may be either *general* or *special*. A *general* verdict is absolute and without reserve, both as to the question of law and fact, either for the plaintiff or defendant. A *special* verdict simply specifies the facts as they find them to be proved, reserving the question of law for the adjudication of the court.

A *special* verdict may be found both in civil and criminal cases.

The minutes of a *special* verdict must be approved by the judge, and ought to be signed by one of the counsel of each party.

## CHAP. VI.

### *Evidence.*

EVIDENCE is used in law for some proof, by writing, or by testimony of witnesses, on oath; and it is called evidence because the question at issue is thereby to be made evident to the jury. Written proofs consist of records, ancient deeds, and wills of thirty years' standing, which prove themselves; but modern deeds and other writings must be attested and verified by the parol testimony of witnesses.

One general rule in all trials is that the best evidence the nature of the case will admit of shall always be required, if possible to be had, but, if not possible, then the next best evidence that can be had shall be procured: for, if it be found that there is any better evidence existing than that produced, the not producing it affords a presumption that it would have detected some falsehood that is concealed.

Thus, in order to prove a lease for years, nothing shall be admitted but the deed of lease itself; but, if that be positively proved to be destroyed or lost, then an attested copy may be produced, or parol evidence be given of its contents. So no evidence of a discourse with another will be admitted, but the party himself must be brought forward; yet, in some cases, the court allows *hearsay* evidence to be adduced, as in proof of any general custom or tradition, or of what deceased persons have declared in their lifetime. But the bare recital of a fact, that is, the mere oral assertion or written entry, by an individual, that a particular fact is true cannot be received in evidence. This objection does not apply to any public documents made under lawful authority; such as gazettes, proclamations, public surveys, records, and other memorials of a similar description.

Books of account, or shop-books, are not allowed, of themselves, to be given in evidence for the owner; but a servant who made the entry may have recourse to them to refresh his memory; and if the servant who was accustomed to make entries be dead, and his hand-writing be proved, the book may be read in evidence; for as tradesmen are often under the necessity of giving credit without any note or writing, this, therefore, when accompanied with such other collateral proof of fairness and regularity, is the best evidence that can then be procured.

But as evidence of this kind would be much too hard upon the buyer at any long distance of time, the law confines this sort of proof to such transactions as have happened within *one year* before the action brought, unless in transactions between merchant and merchant, in the usual course of trade.

A second description of evidence is that by WITNESSES.

All witnesses, of whatever religion or country, that have the use of their reason, are to be received and examined, except such as are *infamous* or *interested* in the event of the cause. All others are competent witnesses, though the jury, from after circumstances, will judge of their credibility.

*Infamous* persons are such as may be challenged as jurors, on account of some delinquency, as treason, felony, forgery, or perjury; but by 31 Geo. III. persons convicted of petty larceny are not disqualified to give evidence; neither are persons convicted of keeping a public gaming-house, 1 Ry. & M. 270. *Interested* persons may be examined upon a *voir dire*, if suspected to be secretly concerned in the issue, or their interest may be proved in court.

It is a principle of law that no man is to be examined to prove his own infamy; but a witness may be examined with regard to his own infamy, where it does not subject him to *future* punishment; as a witness may be asked if he has not stood in the pillory for perjury, 4 T. R. 440.

And, by the 46 Geo. III. c. 37, it is declared that a witness shall not refuse to answer a question relevant to the matter in issue, on the ground that it may tend to establish a debt, or subject him to a civil suit. But it is clear, a man is not bound to answer any questions either in a court of law or equity, which may tend to criminate himself, or which may render him liable to a future penalty.

No counsel, attorney, or other person, entrusted with the secrets of the cause by the party shall be compelled to give evidence of such conversation, or matter of privacy, as came to his knowledge by virtue of such trust and confidence; but he may be examined as to mere matter of fact, as the execution of a deed or the like, which may have come to his knowledge without being entrusted in the cause.

One credible witness is sufficient evidence to a jury of any single fact; though the concurrence of two or more corroborate the proof. But the law considers that there are many transactions to which only one person is privy, and, therefore, requires the testimony of no more.

But, in cases of high treason, petit treason, misprision of treason, and, also, some offences against the crown,

*two lawful witnesses* are required to convict a prisoner, unless he shall willingly confess the same in open court.

To endeavour to dissuade a witness from giving evidence is punishable by fine and imprisonment.

By 7 Geo. IV, c. 64, all persons appearing upon recognizance or subpoena to give evidence in prosecutions for felony, either before the examining magistrate, the grand jury, or on the trial, are entitled to their expenses and a compensation for loss of time, and this although no bill of indictment be preferred. The same provision extends to cases of misdemeanor, with the exception, that no allowance is made for attending the examining magistrate.

When subpoenaed, witnesses must appear at the trial, on the pain of forfeiting 100*l.* to the king, and 10*l.* to the party aggrieved, with damages equivalent to the loss sustained by their want of evidence: but no witness is bound to attend except his expenses are first tendered to him, unless he reside within the bills of mortality, and is summoned to give evidence within the same.

The oath administered to the witness is not only that what he shall depose is true, but that he shall, also, depose the *whole* truth; so that he is not to conceal any part of what he knows, whether interrogated particularly on that point or not.

A Mahometan may be sworn upon the Alcoran, and a Gentoo according to the custom of India: but a person who denies, or has no notion of a God or future state of reward and punishment, is not deemed competent to be a witness. Quakers, who refuse to swear under any form, by the statute of 7 & 8 Will. III. c. 24, are allowed to make solemn affirmation; and, if such affirmation prove false, they are subject to the penalties of perjury; but their affirmation is only allowed in civil, and does not extend to criminal causes. In *penal* actions their testimony is received, as for bribery, *Cowp.* 382.

All evidence is to be given in open court, in the presence of the parties, their attorneys, the counsel, and spectators, and before the judge and jury; each party being at liberty to except to its admissibility, which exceptions are publicly stated, and openly allowed or not by the judge.

## PART III.

### PERSONS AND CLASSES.

SOCIETY is divided into classes, as clergy and laity, civil and military, masters and workmen, and a variety of smaller divisions, each of which is subject to particular laws and regulations separate from the rest of the community. The various laws by which these subdivisions of society are exclusively affected will form the subject of the third part.

#### CHAP. I.

##### *The Clergy.*

THE clergy, comprehending all persons in holy orders and ecclesiastical offices, enjoy peculiar privileges; they cannot be compelled to serve in war, on a jury, nor to appear at a court leet, on view of frank pledge: neither can they be chosen to any temporal office, as sheriff, bailiff, constable, or the like. During divine service, and in going and returning therefrom, they are privileged from arrest in civil suits.

The benefit of clergy is entirely taken away by the 7 & 8 Geo. IV. c. 28, and clerks in orders, convicted of clergyable offences, are made liable to the same punishment as the rest of the community.—See *Benefit of Clergy*, in the DICTIONARY.

Clergymen are incapable of sitting in the House of Commons, and by 57 Geo. III. c. 99, are not, without the consent of the bishop, allowed to take more than eighty acres to farm, on pain of forfeiting forty shillings per acre for every acre exceeding that number: nor are they allowed to trade, or buy and sell for lucre, upon pain of forfeiting the value of the goods so bought or sold; and the contracts made in such trade are void. But they may buy and sell corn and cattle, the produce of their farms, or such as is necessary for use, provided

they do it not in person, in any fair, market, or public sale.

Though a clergyman is liable to penalties for trading, his contracts are valid, and he is subject to the bankrupt laws.

Clergymen are in general liable to all public charges imposed by parliament, unless specially exempted; as in certain cases from the duty on horses, by 43 Geo. III. c. 61. And, by 52 Geo. III. c. 93, every ecclesiastic, not possessed of 100*l.* annual income, from preferment or otherwise, is exempted from duty on any horse used to draw a two-wheel tax-cart.

They are liable to the poor-rate for their tithe and glebe; and, if not compellable to take parish apprentices, they are chargeable towards putting them out.

By 1 Henry VII. the incontinence of a clergyman may be punished with imprisonment by the ordinary.

By the 7 Geo. IV. c. 66, they are empowered to purchase houses, &c. for the use of their benefices.

The clergy are divided into various ranks and degrees.

An *archbishop* is the chief of the clergy in a whole province, and has the inspection of the bishops of that province, as well as the inferior clergy, and may deprive them on proper cause.

The Archbishop of Canterbury is styled the metropolitan and primate of all England, and enjoys, by custom, the privilege to crown the kings and queens of the kingdom. He has, also, the power to grant dispensations in any case: to grant special licenses to marry at any time or place; and to exercise the right of conferring all the degrees which are taken in the universities. But in this case the graduates of the universities, by various acts of parliament and other regulations, are entitled to many privileges not extended to a *Lambeth degree*; as, for instance, those degrees, which are a qualification for dispensation to hold two livings, are confined, by 21 Hen. VIII. to Cambridge and Oxford.

A *bishop* has power and authority, beside his sacred functions, to inspect the manners of the people and clergy, and to reform them by ecclesiastical censure; for which purpose he has courts under him, which are

holden by his chancellor. It is, also, the business of the bishop to ordain, admit, and institute priests; to grant licenses for marriage, consecrate churches, and confirm, suspend, or excommunicate.

Archbishops and bishops are virtually appointed by the crown.

A *dean* and *chapter* are the council of the bishop, to assist him with their advice in affairs of religion. The chapters, consisting of canons or prebendaries, are sometimes appointed by the king, sometimes by the bishop, and sometimes elected by each other.

Deaneries and prebends may become void, like a bishopric, by death, deprivation, or resignation.

An *archdeacon* has an ecclesiastical jurisdiction, subordinate to the bishop, through the whole of his diocese, or some part of it.

The most numerous class of ecclesiastical persons are *parsons* and *vicars* of churches.

A *parson* is one that has full possession of all the rights of a parochial church: he is sometimes called rector, or governor of the church. During his life, he has, in himself, the freehold of the parsonage, the glebe, the tithes, and other dues.

The distinction between a *parson* and a *vicar* is this: the parson has usually the sole right to all the ecclesiastical dues in his parish; but the vicar has generally an appropriator over him, entitled to the best part of the profits, to whom he is, in effect, perpetual curate, with a fixed stipend. A vicar is a name unknown till the reign of Henry III.; before which, the rector provided a curate and maintained him on an arbitrary stipend.

The method of becoming a parson or a vicar is much the same: holy orders, presentation, institution, and induction, are necessary to both. No person is eligible to any benefice unless he has first been ordained a priest, and then he is called clerk a in orders. By canon, confirmed by the 44 Geo. III. c. 43, no person can be admitted a deacon in England or Ireland till he has attained the age of twenty-three complete, nor be admitted a priest before the complete age of twenty-four. While a man is only a deacon, he can quit his pro-



fession for any other; but not so when once ordained a priest. None can administer the sacrament but a priest; nor can a deacon preach without first being heard by the bishop.

Before admission to a benefice, a declaration of conformity to the Liturgy must be made; and the party must, also, subscribe before the ordinary, and publicly read in the church of the benefice the 39 Articles, with a declaration of his assent thereto, in two months after the possession of the benefice, otherwise he may be deprived, 13 Eliz. and 23 Geo. II. c. 28.

The bishop may refuse institution to a clerk, on the ground of heresy, gross immorality, or insufficiency in point of learning.

*Induction* is performed by mandate from the bishop, and consists in giving the clerk corporal possession of the church; as by holding the ring of the door, or tolling a bell, which is meant to give the parishioners notice to whom their tithes and dues are to be paid.

No person is entitled to hold more than one living, without a *dispensation*; nor must the two livings be more than thirty miles apart; and the person obtaining the dispensation must be a master of arts in one of the universities.

With respect to *non-residence*, which is now regulated by the 57 Geo. III. c. 99, incumbents cannot absent themselves from their benefices for more than three months, without being subject to penalty. *Sinecure* rectories are excepted, as well as royal chaplains, certain public officers, and students in the universities. The bishop may, at his discretion, grant license for non-residence, on account of the illness of an incumbent, his wife or family, or where there is not a fit parsonage-house.

*Curates* are the lowest degree in the church, being in the same state that a vicar was formerly, an officiating temporary minister, instead of an incumbent entitled to the tithes of the parish.

By the 57 Geo. III. c. 99, where an incumbent does not duly reside, the bishop is empowered to grant a certain fixed salary to the curate, out of the proceeds of the benefice; such salary shall, in no case, be less

than 80*l.* per annum, or the annual value of the benefice, if the gross value does not amount to 80*l.*; and not less than 100*l.* per annum, or the whole value, if the value shall not exceed 100*l.* in any parish where the population shall amount to or exceed 300 persons, and so on in proportion.

A curate cannot have the benefit of a proceeding by monition for the recovery of a salary assigned by a bishop, without the consent of the incumbent, the incumbent being resident on his benefice, and discharging the duties generally, but desirous of the assistance of a curate, *Rex v. Bishop of Peterborough*, 3 B. & C. 47.

## CHAP. II.

### *Nobles and Commoners.*

ALL degrees of nobility are derived from the king, and he may institute what new titles he pleases. Hence it is that all degrees of nobility are not of equal antiquity. Those now in use are dukes, marquises, earls, viscounts, and barons.

The right of peerage seems to have been originally territorial, that is, annexed to lands, honours, castles, and manors, the proprietors and possessors of which were allowed to be peers of the realm, and were summoned to parliament to do suit and service to the sovereign: when the land was alienated, the dignity passed with it as appendant; but when alienations grew frequent, the peerage was confined to the lineage of the party ennobled, and, instead of territorial, became personal.

A peer cannot lose his nobility except by death or attainder; though there is an instance in the reign of Edward IV. of the degradation of George Nevile, Duke of Bedford, by act of parliament, on account of his poverty, which rendered him unable to support his dignity. It has been said, too, that, if a baron waste his estate, so that he be not able to support his degree, the king may degrade him; but it is now expressly held that a peer can only be degraded by act of parliament.

In treason, felony, and misprision of these offences, a nobleman must be tried by his peers; but in misdemeanors, as riots, libel, conspiracy, and perjury, a peer is tried like a commoner, by a jury.

*Commoners* consist of all those who are not noble, and, like the nobility, are graduated in ranks and degrees, as knights and baronets. Esquires and gentlemen, according to Sir Edward Coke, are mere titles of *worship*, not of *dignity*, and before whom, the heralds rank all colonels, sergeants at law, and doctors in the three learned professions.

The rules of precedence in England may be reduced to the following table, which is founded on various statutes, grants by letters patent, and established custom.

TABLE OF PRECEDENCE.

The King's children and grandchildren.	Marquises
The King's brothers	Dukes' eldest sons
The King's uncles	Earls
The King's nephews	Marquises' eldest sons
Archbishop of Canterbury	Dukes' younger sons
Lord Chancellor, or keeper, if a Baron	Viscounts
Archbishop of York	Earls' eldest sons
Lord Treasurer	Marquises' younger sons
Lord President of the Council	Secretary of State, if a Bishop
Lord Privy Seal	Bishop of London
Lord Great Chamberlain	Bishop of Durham
Lord High Constable	Bishop of Winchester
Lord Marshal	Bishops
Lord Admiral	Secretary of State, if a Baron
Lord Steward of the household	Barons
Lord Chamberlain of the household	Speaker of the House of Commons
Dukes	Lords Commissioners of the Great Seal
	Viscounts' eldest sons
	Earls' younger sons
	Barons' eldest sons

Knights of the Garter	Baronets
Privy Counsellor	Knights Baronets
Chancellor of the Exchequer	Knights of the Bath
Chancellor of the Duchy	Knights Bachelors
Chief Justice of the King's Bench	Baronets' eldest sons
Master of the Rolls	Knights' eldest sons
Vice-Chancellor	Baronets' younger sons
Chief Justice of the Common Pleas	Knights' younger sons
Chief Baron of the Exchequer	Colonels
Judges, and Barons of the coif	Sergeants-at-Law
Knights, Baronets, argal	Doctors
Viscounts' younger sons	Esquires
Barons' younger sons	Gentlemen
	Yeomen
	Tradesmen
	Artificers
	Labourers.

*Married* women and widows are entitled to the same rank among each other as their husbands would respectively have borne among themselves, except such rank is merely professional or official; and *unmarried* women to the same rank as their eldest brothers would bear during the lives of their fathers.

With respect to the rank of *esquire*, the distinction is somewhat unsettled, for it is not an estate, however large, that confers this degree. Camden, who was himself a herald, reckons up four sorts of esquires. 1. The eldest sons of knights, and their eldest sons in perpetual succession. 2. The eldest sons of peers, and their eldest sons in perpetual succession. 3. Esquires created by the king's letters patent, or other investiture, (long since disused,) and their eldest sons. 4. Esquires by virtue of their office, as justices of the peace, and others who bear any office or trust under the crown, and are stiled esquires by the king in their commission and appointment.

Lastly, barristers are also esquires; and the Court of Common Pleas refused to hear an affidavit read, because a barrister named in it was not called an esquire, 1 *Wils.* 244. The title is, also, now commonly conferred

has accrued to the king, and certify the whole to the Court of King's Bench or the next assize.

By 25 Geo. II. c. 29, the coroner is allowed 20*s.* for every inquisition (except in a gaol), and 9*d.* per mile for travelling, from his usual abode, to take the inquisition; to be paid out of the county-rates.

By 7 Geo. IV. c. 64, *all* coroners in inquisitions, for manslaughter or murder, are required, under penalty, to take the evidence in writing, and are empowered to bind witnesses, by recognizance, to appear at the trial.

From *Garnett v. Ferrand*, it appears a coroner's court is a close court for the purposes of the inquisition, and the coroner, acting judicially, may exclude any one from the court who is there merely as a spectator or reporter, not for the purpose of giving evidence or information. C. J. Abbot, K. B. *May 23d*, 1827.

#### JUSTICE OF THE PEACE.

Justices of the peace are appointed by the crown, and continue in office during the royal pleasure. Some of them are of the *quorum*; that is, certain business cannot be transacted without their presence. The powers and duties of justices depend on their commission, and on the several statutes which have created objects of their jurisdiction. They are commissioned to preserve the peace, to suppress riots and affrays, to commit felons and inferior criminals; and two or more of them may inquire into and determine felonies and other misdemeanors. Their duties have greatly increased by late acts of parliament, especially in sessional business, in regulating gaols and houses of correction, in taking cognizance of various offences against the vagrant, game, and revenue laws, and in the licensing of public houses.

Every justice must have an estate of 100*l.* per annum, clear of incumbrance; and, if he act without such qualification, he forfeits 100*l.* But this does not extend to corporation justices, peers, privy counsellors, judges, under-secretaries of state; nor to the heads of colleges in the two universities, or mayors of Oxford and Cambridge.

No practising attorney, solicitor, or proctor, is qualified to act as justice for any county.

A justice of the peace acts *ministerially* or *judicially*. *Ministerially*, in preserving the peace, hearing charges against offenders, issuing summonses or warrants thereon, examining the informant and his witnesses, binding over the parties to prosecute and give evidence, bailing the supposed offender, or committing him for trial. *Judicially*, as when he convicts for an offence. His conviction, drawn up in due form, and unappealed against, is conclusive, and cannot be disputed by action; though, if he act illegally, maliciously, or corruptly, he is punishable by information or indictment. When a criminal information is applied for against a magistrate, the question for the court is not whether the act done be found, on investigation, not strictly right, but whether it proceeded from an unjust, oppressive, or corrupt motive, (among which *fear* and *favour* are generally included,) or from mistake or error only. In the latter case, the court will not grant the rule, *Rex v. Borron*, 3 B. & A. 432. An information will be granted against a justice as well for granting as for refusing an ale-license improperly, 1 T. R. 692.

Justices are empowered, in various cases, to issue warrants of distress for the recovery of penalties on convictions before them. And, by the 5 Geo. IV. c. 18, where it appears that sufficient distress cannot be had, the justices may, without issuing such warrant of distress, commit the offender to prison.

By 1 & 2 Geo. IV. c. 63, justices of counties, ridings, or divisions, may act within any city, town, or other precinct, having exclusive jurisdiction, but not being counties themselves within their district. The 7 & 8 Geo. IV. c. 64, more accurately defines the powers of justices in giving bail on charges of felony, and also requires them to take the most material part of the evidence on examination before them in writing, both in charges of felony and misdemeanor.

There are many statutes made to protect justices in the discharge of their duties. Such as prohibits them from being sued for any oversight without prior notice, and to stop all suits begun on tender made of sufficient amends. But, on the other hand, any malicious or ty-

ranical abuse of their office is severely punished ; and persons recovering a verdict against a justice for any wilful and malicious injury are entitled to double costs.

#### POLICE JUSTICES OF THE METROPOLIS.

These are stipendiary magistrates, which, exclusive of those at Bow-street Office, were created by act of parliament in 1792. They are twenty-seven in number, appointed and salaried by the crown. Their general duties, like those of the unpaid magistrates of the country, are the preservation of the peace, the prevention of crimes, the apprehension of offenders, and their examination and committal to prison. One or more of the police magistrates are required to attend every day (except Sunday), from ten o'clock in the morning until eight o'clock in the evening ; and not fewer than two justices are to attend, every day, at each office, from twelve o'clock at noon until three in the afternoon.

By the 6 Geo. IV. c. 21, the salaries of the police justices are increased from 600*l.* to 800*l.* per annum. By the same act, they are empowered, on the application of five inhabitants of any street, or the proprietors of any place of public resort, to appoint a competent number of constables, recommended by the applicants and approved by the justices, to keep the peace in such street or place of public resort ; the wages of such constables to be paid by the inhabitants or proprietors respectively.

#### CONSTABLES.

Constables are of much more confined jurisdiction than justices of the peace, and are of three kinds, namely, *high* constables, *petty* constables, and *special* constables.

The office of the *high* constable is not confined to any particular town or parish, but extends to the whole hundred for which he is appointed. The *petty* constable's jurisdiction extends to the parish, borough, or liberty, for which he is chosen. The *special* constable's jurisdiction is the same as the petty constable's, and he is, in fact, only appointed, in particular emergencies, to assist the former in his duties.

Till lately, constables could not lawfully execute any

warrant beyond the precinct or jurisdiction for which they were appointed; but by the 5 Geo. IV. c. 18, they are empowered to execute a warrant any where within the jurisdiction of the justice who may issue or endorse the same.

By 1 Geo. IV. c. 37, when it shall appear by the information, on oath, of five respectable householders, that any tumult, riot, or felony, has taken place, or may be reasonably apprehended, two justices of the peace may appoint special constables to preserve the public peace. In this case, the appointment is compulsory; but, in all emergencies, magistrates may appoint and swear in any number of voluntary special constables for the preservation of the peace.

*Exemptions from the office.* 1. Aged persons, incapacitated by weakness; and, in Westminster, those sixty-three years old are expressly exempted. 2. Aldermen of London. 3. Apothecaries practising in, or within seven miles of London, free of the Company; or, in the country, having served seven years. 4. Attorneys of the Courts of King's Bench and Common Pleas. 5. Practising barristers. 6. Dissenters, being teachers or preachers, but not otherwise. 7. Foreigners naturalized. 8. Sergeants and private men serving in the militia. 9. Prosecutors of felons, and the first assignee of the certificate. 10. Surgeons free of the Company. 11. Physicians, being president and fellows of the College in London, but no others, nor elsewhere. 12. Yeomanry cavalry, by 57 Geo. III. c. 44, s. 13. 13. And, lastly, by 3 Geo. IV. c. 77, no licensed alehouse-keeper can be a constable, either as principal or deputy, under a penalty of 10*l*. Nor can a constable be surety for an alehouse-keeper.

As the office of constable may be executed by DEPUTY, officers of the guards are not exempt, nor officers in the customs, nor a younger brother of the Trinity-house, nor masters of arts, nor women, 2 *Hawk.* c. 10, s. 37. But if a gentleman of quality, or a physician, officer, &c. be chosen constable where there are other sufficient persons beside, and no special custom concerning it, it is said such person may be relieved. The king may exempt



any one from being constable, if there be a sufficient number of persons left to serve the office, 1 T. R. 686.

A constable may appoint a deputy to execute his office, when, by reason of sickness, absence, or otherwise, he cannot do it himself. If the deputy be not duly sworn, the principal is liable, otherwise he is not. Dissenters and Roman Catholics may execute the office of constable by deputy, 1 W. & M. c. 18 ; 31 Geo. III. c. 32.

#### DUTIES OF CONSTABLES.

The general duties of a constable are to prevent the violation of the laws, to apprehend offenders, to preserve the peace of his district, to attend, on particular occasions, excise officers, and execute the warrants of coronors and justices of the peace.

If persons are engaged in an affray, or on the point of entering into one, as where one shall threaten to beat another, the constable may apprehend the offender and carry him before a justice, or he may imprison him, on his own authority, till the heat be over, and afterwards detain him till he find sureties for his good behaviour.

If an affray be in a house, the constable may break open the doors to preserve the peace ; but he cannot apprehend for an affray committed out of his presence without a warrant from a magistrate, unless in case of felony.

A constable may justify an imprisonment without warrant on a reasonable charge of felony made to him, though he afterwards discharge the prisoner without taking him before a magistrate, and though it turn out no felony has been committed. But, in general, a constable cannot, without an express charge or warrant, justify the arrest of a supposed offender, upon suspicion of guilt, unless an actual felony has been committed, and there is reasonable cause for suspicion that the party apprehended is guilty.

In executing a warrant, the arrest is to be made by laying hold of, or, at least, securing the person of the party ; without this it is not a legal arrest.

A constable, being a known and sworn officer within

his own district, is not obliged to show his warrant on being demanded; but, if he is not sworn, or out of his district, he must produce his warrant.

A *warrant of distress*, however, must, if required, be shown to the person whose goods are distrained.

No one can justify breaking open a door to make an arrest, without first acquainting the owner with the cause of his coming, and requesting admittance; no particular form of notice is requisite, it is sufficient to say the officer comes under proper authority, not as a trespasser.

If there be disorderly drinking or noise in a house, at an unseasonable hour of the night, (especially in an inn, tavern, ale, or coffee-house,) the constable may, after demanding admittance, and refusal, break open the door, to see what is doing, and suppress the disorder. But, upon a general warrant, expressing neither treason, felony, nor breach of the peace, an officer cannot break open any door to execute it.

To execute process in a *civil suit*, an officer cannot justify breaking open an *outer* door or window; but, if he find the outer door open, or it be opened to him, he may then force an inner door. This privilege is strictly confined to outer doors; so that if an officer gain admission to a house where any one lodges whom he is in search of, he may justify breaking open any of the apartments to execute his process, unless the whole house is let in lodgings, then each apartment is deemed a separate dwelling.

If an offender cannot be conveniently conveyed before a justice, or to prison, he may be put, *pro tempore*, in the stocks.

Persons apprehended in adultery, fornication, or a bawdy-house, may be carried before a justice, to find sureties for their good behaviour.

Constables are to assist landlords in distraining for rent, under authority of a justice's warrant; and, in company with such landlords, may break open and enter houses, and other places, to search for goods suspected to be concealed to avoid the distress.

By 33 Geo. III. c. 55, if a constable, upon complaint, upon oath, before two justices, be convicted of neglect

of duty or disobedience of any lawful warrant or order, he may be fined 40*s.* And, by 5 Geo. IV. c. 83, neglecting his duty, under the Vagrant Act, subjects him to a penalty of 5*l.* Assaulting a constable, to prevent the arrest or detention of persons charged with felony, subjects to transportation for seven years, 1 & 2 Geo. IV. c. 88. No action can be brought against a constable for the improper discharge of his duty after six months from the time of the fact being committed.

By the 7 & 8 Geo. IV. c. 38, constables are no longer required to make *presentments* at any petty sessions, or general or quarter sessions of the peace, of popish recusants, retailers of brandy, forestallers and engrossers; false weights, highways and bridges; riots, rogues, and disorderly houses.

#### WATCHMEN.

By the Statute of Winchester, if any suspicious person pass by the watch he may be arrested till the next day, and then discharged, if nothing can be brought against him: or he may force such person to submit to his authority, and shall not be punished for an assault.

A watchman may deliver all suspicious persons, night-walkers, and vagabonds, to the constable of the district.

Watchmen and beadies have power to arrest and detain in prison for examination persons walking in the streets at night, whom there is reasonable ground to suspect of felony, although there is no proof of felony having been committed. 3 *Taunt.* 14.

If either a watchman or constable be killed in the discharge of his duty, it is murder.

By 3 Geo. IV. c. 55, no person can be appointed a watchman in the metropolis who is above the age of forty years, unless he has been previously and up to the time of such appointment, employed in the horse or foot patrol.

#### CHAP. IV.

#### *Parish Officers.*

#### CHURCHWARDENS.

CHURCHWARDENS are chosen annually in Easter-week, either by the minister, the parish, or both together, as

custom or statute directs. They represent the body of the parish, and are appointed to look after the church and observe the behaviour of the parishioners, in such matters as appertain to ecclesiastical censure and jurisdiction.

Generally speaking, all the inhabitants of the parish are liable to serve in the office, except peers and members of parliament, clergymen, barristers, attorneys, physicians, surgeons, aldermen, officers of the customs, and other persons whose avocations require constant personal attendance; aliens, papists, Jews, dissenting preachers, and persons living out of the parish, are disqualified.

The duties of the office are to bind out poor children apprentice; to collect and disburse assessments, made by the parishioners, for the repairs of the church; to keep the keys of the belfry, and take care the bells are rung only on proper occasions; during a vacancy of the benefice, to observe that the church is properly aired and kept clean, and in good repair; to provide all requisites for the communion service, christenings, and other ceremonies; to prevent indecent or disorderly behaviour at church; for which purpose they may, without being guilty of an assault, take off a person's hat, or even turn him out of the church; to apprehend and safely secure all lunatics and insane persons; to see that the parson does his duty according to the rights of the church of England; to levy the sum of twelve-pence on all persons not resorting to the parish church on Sundays and holidays (excepting Dissenters and Roman Catholics), and the sum of three shillings and four-pence for using unlawful sports on these days: lastly, to see that the minister enters, in the parish register, all weddings, christenings, burials; and to give public and proper notice to the parishioners of the holding of vestries.

The churchwardens have such special property in the organ, bells, parish books, Bible, surplice, and chalice, that they may bring an action, in their joint names, for any damage they sustain.

The SEATS of the church, being fixed to the freehold,

are the common property of all the parishioners who contribute to the repair of the church ; and the churchwardens, alone, cannot dispose of them ; nor the churchwardens and rector jointly, without consent of the ordinary, except by special custom, as in London, where they are at the disposal of the churchwardens, under the control of the parish.

A seat, or priority in a seat in the body of the church, may be held by custom, as belonging to a *house*, if it has been used or repaired, time out of mind, by the inhabitants of such house : it cannot be claimed by right of land ; it must be claimed as belonging to the house, in respect of the inhabitancy.

Trespass will not lie for entering into a pew ; because the plaintiff has not the exclusive possession, the possession of the church being in the parson. 1 *T. R.* 43.

The pulpit is the property of the parson, and the churchwardens cannot let any other minister have the use of it without consent of the incumbent.

Every churchwarden is an overseer of the poor, by 43 Eliz. c. 2.

Churchwardens paying the poor otherwise than in lawful money are to forfeit to the poor not less than 10s. nor more than 20s. 9 Geo. III. c. 37.

Under the Church-building Act, 58 Geo. III. c. 45, two churchwardens of each new church, under the act, are to be chosen, one by the incumbent, the other by the parishioners.

#### PARISH VESTRIES.

By the 59 Geo. III. c. 69, no meeting of the inhabitants in vestry shall be held, unless, at least, three days' previous notice have been given in the parish church, or public chapel, on some Sunday, during, or immediately after, divine service, and by affixing the same notice on the principal door of such church or chapel.

Every inhabitant, whose poor-assessment is less than 50*l.* is entitled to give one vote ; amounting to 50*l.* or upwards, he is entitled to one vote for every 25*l.* above that sum ; provided that no inhabitant shall be entitled to more than six votes.

If the rector, vicar, or perpetual curate is not present at a vestry meeting, a chairman may be appointed, by plurality of votes.

By 59 Geo. III. c. 85, s. 3, no person who has refused, or neglected, on demand, to pay his poor rate, shall vote or be present in any vestry.

These regulations for parish vestries extend through England and Wales, with the exception of London and Southwark.

By the 59 Geo. III. c. 12, the parishioners may appoint, annually, a SELECT VESTRY, for the management of the concerns of the poor, consisting of not more than twenty, nor less than five, substantial householders or occupiers within the parish; and any three of them, two of whom shall neither be overseers or churchwardens, shall be a *quorum*, competent to inquire into the state of the poor, and to determine proper objects for relief.

Minutes are to be kept of the proceedings of the select vestry, which, as well as reports of their proceedings, are to be laid before the inhabitants, in general vestry, in the months of March and October in every year.

#### OVERSEERS OF THE POOR.

The exemptions from serving the office of overseer are the same as those of churchwarden; and, indeed, the exemptions there specified extend to all parochial offices.

A woman may be appointed overseer of the poor. 2 T. R. 395.

Overseers are chosen by the justices from among the resident householders, paying the poor assessment; they must be substantial householders, and such must be expressed in their appointment. By 54 Geo. III. c. 91, they are to be nominated on the 25th of March, or within fourteen days next after.

Their duties consist chiefly in raising, by rate on the inhabitants, the sums necessary for the relief of the poor, impotent, old, blind, lame, and such others as are not able to work; and, secondly, to provide for such as are able to work and cannot get employment.

Money advanced to the poor, for their relief, must be paid at the beginning and not at the end of the week.

By 49 Geo. III. c. 68, if a single woman is pregnant, or delivered of a child likely to become chargeable to the parish, or shall declare herself pregnant, and that the child is likely to be born a bastard, and shall, upon oath, before a justice, charge any person with being the father, such justice shall, upon application made by the overseers, cause the reputed person to be apprehended, and commit him to prison, unless he obey the magistrate's order, or give security that the child shall not become chargeable to the parish.—See page 90 and *Bastard*.

The overseers, with the consent of the inhabitants, may hire any house, or contract with any person for the lodging, maintaining, and employing the poor, and take the benefit of their work and service, for the use of the poor in general.

Where a family is left chargeable, the overseers may seize, with the order of the justices, so much of the rents and profits of the father as will maintain them.

Persons *threatening* to run away and leave their families chargeable, or, being able, and refusing to work and maintain them, may be committed to the house of correction.

Families falling into distress from the neglect or extravagance of their parents, the overseers may advance small sums for their relief, which they may compel the parents to repay by weekly instalments.

Books shall be kept open to the inspection of the parish ioners, in which shall be registered the names of persons receiving relief, the time when they were first admitted, and the occasion which reduced them to that necessity.

Poor children, whose parents are unable to provide for them, may be bound out apprentice; if male, to the age of twenty-one; if female, to the age of twenty-one, or till married.

The inhabitants are not merely at liberty to take, but may be compelled to take such poor apprentices.

Boys may be bound apprentice from the age of ten to twenty-one to the sea service; and from the age of eight to sixteen, to chimney-sweeping.

Seamen's wages and pensions may be made available to the maintenance of their families when chargeable, 59 Geo. III. c. 12.

## PROPERTY LIABLE TO THE POOR RATE.

A farmer is not rateable for his stock, though a tradesman is for his stock-in-trade, if its value can be ascertained, 6 *T. R.* 154.

Chapels, if a profit be made of them, are rateable to the poor; but the trustees of a meeting-house, of which no profit is made of the pews, are not rateable, *Rex v. Woodward*, 5 *T. R.* 79.

Tolls taken on a river are liable as well as tolls taken in corporations.

Ships are rateable in the parish to which they belong.

Hospital-lands are chargeable to the poor though the hospital itself is exempt.

Ale-houses, having no *legal* occupier, are not taxable as such under the poor-laws.

Money in a man's house or possession is not rateable; but personal property, if visible, and yielding a permanent annual profit, is rateable, 1 *T. R.* 727.

The possessions of the crown, or of the public, are not rateable, *Amherst v. Somers*, 2 *T. R.* 372.

Coal and slate mines are rateable, but iron and lead mines are exempted.

In general, all property, the amount of which is ascertainable, and of which the owner has a beneficial enjoyment, is rateable to the poor.

In assessing rates, it is the occupier of the premises, not the lessor or landlord, who is liable to the payment. But, by the 59 Geo. III. c. 12, a parish vestry may direct that the *owner* or *lessor* of houses or dwellings, the rent of which does not exceed 20*l.* nor is less than 6*l.* and which are let for any term less than a year, may, in respect to such houses, or dwellings, be assessed to the poor-rate instead of the occupier. The goods of such occupier may be distrained for the rates to the amount of the rent actually due; and the occupier, paying the rates, is empowered to deduct the amount from his rent.

If a poor-rate be not published in the church, on the Sunday next after it is allowed, the payment of it cannot be enforced. *Rex v. Newcombe*, 4 *T. R.* 368.



The rate must be made on all the rateable inhabitants, in equal proportion, according to their respective property and possessions. And the rate must be made according to the *improved* value of the estate, and not according to the rent which the occupier may pay for it.

The Court of King's Bench will grant an information against overseers for not receiving a pauper regularly sent to them by an order of two justices. And for any neglect of duty they are punishable by indictment, 5 *Mod.* 179.

By 55 Geo. III. c. 137, s. 6, no churchwarden or overseer of the poor, nor any person having the management of them, shall furnish, *for his own profit*, any provisions or material for their use, under a penalty of 100*l.* except there should not be a person competent or willing to undertake it in the parish. Notice of all contracts for supplying workhouses must be publicly advertised at least seven days prior to the time appointed for receiving proposals for the same.

#### PARISH SETTLEMENT.

The law of settlement may be reduced to the following general heads. 1. By *birth*. 2. By *parentage*. 3. By *marriage*. 4. By *apprenticeship*. 5. By *hiring and service*. 6. By *forty days' residence*. 7. By *estate*. 8. By *paying rates and taxes*. 9. By *serving a public office*.

1. The place of *birth* is, *primâ facie*, the place of settlement, 6 *T. R.* 653. Therefore, a bastard, in the eye of the law, having no father, is settled in the place of his birth, unless he derive a settlement from his mother.

2. All *legitimate* children are settled in the parish where their parents are settled, till they get a new settlement for themselves. If the parents acquire a new settlement, the children, also, follow, and belong to the last settlement of the father; or, after the death of the father, to the last settlement of the mother while she is unmarried, or till the child attain maturity and acquire a settlement.

3. A new settlement may be acquired by *marriage*. For a woman marrying a man who is settled in another

parish changes her own settlement; the law not permitting the separation of husband and wife. A wife can gain no settlement separate from the husband during coverture. Hence the judges have decided, *Rex v. Leeds*, 4 Barn. & Ald. that an Englishwoman, marrying a native of Scotland or Ireland, lost all claim to parochial relief in England, and in the event of being distressed or chargeable, may be removed to the country where the husband was born, unless she has individually acquired a settlement.

4. Being bound *apprentice* gives a settlement where the last forty days are served.

5. Being *hired for a year*, when unmarried and childless, and serving a year in the same service, entitles to a settlement. This holds even if a person marry before the service commences, providing the engagement of *hiring* was completed before marriage, 3 T. R. 382. The service and hiring, however, must be for one *entire* year; so that service under a hiring for seven years to work only 13 hours, per day, with Sundays excepted, will not give a settlement. The servant must be under the control of the master for the *whole* year, 4 T. R. 219.

6. No person gains a settlement by dwelling *forty days* in any tenement, unless such tenement is a distinct dwelling-house, hired, occupied, and a rent of at least 10*l.* actually paid, for one *whole* year.

7. In having an *estate* of one's own, and residing thereon forty days, however small the value may be, in case it be acquired by act of law, or a third person, is a sufficient settlement; but, if a man acquire it by his own act, as by purchase, then, unless the consideration advanced be 30*l.* it is no settlement for any longer time than the person shall reside thereon.

8. Persons paying all *local rates and levies* for a tenement of the yearly value of 10*l.* are entitled to a settlement. In this case however, the 6 Geo. IV. c. 57, expressly provides that the tenement must be actually occupied under such yearly hiring, and the rent to the amount of 10*l.* actually paid for the time of one whole year at the least.

9. Executing, when legally appointed, by taking the

oaths, any *public parochial office* for a whole year in the parish, as churchwarden or overseer, will gain a settlement, if coupled with residence for forty days. A person, however, serving the office of constable, as deputy, does not thereby gain a settlement; he must be *legally* placed in the office, by taking the oaths, &c.

As to REMOVALS, it is now settled, by 35 Geo. III. c. 101, that no person shall be removed by order of removal till he become *actually* chargeable. Persons convicted of felony, rogues, vagabonds, idle or disorderly persons, and persons of evil fame or reputed thieves, not giving a satisfactory account of themselves, may be removed as actually chargeable.

With respect to the power to remove under this act SINGLE WOMEN pregnant, it is not so clearly defined, but the law seems to stand thus. An unmarried woman with child is deemed actually chargeable, and may be removed, unless her situation or circumstances in life are such as to render it improbable she will hereafter become chargeable to the parish in consequence of her pregnancy.

Thus, a single woman living in service with her master is not removeable *against the consent of herself and master*, though adjudged by the order of removal to be with child, and, therefore, chargeable to the parish in which she is serving; the statute not intending to make persons removeable who were not so before, but only leaving certain persons liable to be removed, though not, in fact, chargeable, if, *otherwise*, proper objects of removal, *Rex v. Alvely*, 3 E. R. 563.

Again, an order of removal, merely adjudging the person is *with child and unmarried*, was held bad; the fact of pregnancy being only presumptive evidence of her chargeability, which is open to be rebutted by evidence of her property, independant circumstances, or protection from friends, 11 E. R. 381.

By the 59 Geo. III. c. 12, s. 33, natives of Scotland, Ireland, the Isles of Man, Guernsey, and Jersey, may be removed, with their families, from any parish in which they are chargeable to the place of their birth.

The magistrates have power to suspend the order of removal for any pauper during sickness or infirmity.

## PARISH CLERKS.

Parish clerks, formerly, were generally in holy orders, and some are to this day. They are usually appointed by the incumbent ; but, by custom, may be chosen by the parishioners. By 59 Geo. III. c. 134, the clerk in every church or chapel, built under the Church-building Act, is appointed annually by the minister. A parish clerk must be at least twenty years of age ; be able to read and write, of honest conversation, and have a competent knowledge of psalmody.

## SEXTON.

Sextons are chosen by the minister or the parish, and their business is to keep the church and pews cleanly swept and sufficiently aired ; to make graves and open vaults for the burial of the dead ; to provide (under the churchwardens' direction) candles for lighting the church, bread and wine, and other necessaries, for the communion, and, also, water for baptism ; to attend the church during divine service, in order to open the pew-doors for the parishioners, keep out dogs, and prevent disturbance. Sextons and parish clerks, by the common law, have a freehold in their offices ; therefore, though they may be punished, they cannot be deprived by ecclesiastical censure.

## VESTRY CLERKS

Are chosen by the vestry during pleasure. Their business is to attend parish meetings ; to draw up and copy all orders and other acts of the vestry, and to give copies thereof to the parishioners when required.

## BEADLE.

This officer is also appointed by the vestry. His business is to give notice when a vestry is appointed ; to attend upon it when met, and execute its orders. He is, also, to assist the churchwardens, overseers, and constables in their respective duties, and make himself generally useful in vestry and parish business.

## SURVEYORS OF THE HIGHWAYS.

Every parish is bound to keep the highways passing

through it in repair, unless, by reason of the tenure of land, or otherwise, this office is consigned to private persons. For this purpose, surveyors of the highways are appointed. They were originally chosen by the constables and churchwardens of the parish, but now, by 13 Geo. III. c. 78, they are appointed by two justices from a list of at least ten persons nominated by the parish; but the magistrates may appoint others if they deem those in the list not properly qualified. 7 *T. R.* 169.

The number of surveyors is regulated by the extent of the parish, and salaries may be allowed them for their trouble. Refusing to serve, subjects to a penalty of 5*l.*; but, having served one year, they cannot be appointed a second time, within three years, without their consent.

Their duties consist in keeping in repair the public highways of the parish; that is, the ways leading from one town to another. For this purpose, they may require the aid of all occupiers of lands and tenements to assist in fetching materials and in mending the roads, and may levy a rate on the parish, with the consent of the quarter sessions. They may erect guide posts, and remove nuisances on the highway, or give notice to the owners to remove them.

Every cart-way leading to a market-town must be twenty feet wide at least, (if the fences will permit,) and may be increased, by two justices, at the expense of the parish, to the breadth of 30 feet. No tree or bush shall be permitted to grow within 15 feet from the centre of the road, except for ornament or shelter to a house; and the owners of adjoining lands may be compelled to cut their hedges, so as not to exclude the sun and wind from the highway.

Surveyors are subject to penalty for having any beneficial interest in contracts for repairs; and, by 55 Geo. III. c. 47, they are placed under the control of the magistrate to make annual returns of the expense of highways.

Under 13 Geo. III. and the 55 Geo. III. c. 68, justices, at special sessions, may divert or stop up any *unnecessary* way. See *Turnpike*, in the *DICTIONARY*.

## CHAP. V.

*Corporations.*

A CORPORATION consists of one or more individuals, created by custom, by royal charter, act of parliament, or prescription, and inheriting, in its public capacity, certain rights and immunities, which it may transmit in perpetuity to its successor.

When a corporation is created, a name must be given to it, by which it may be known and do all legal acts. A name may be obtained by implication ; so, if the king should incorporate the inhabitants of Dale, with power to choose a mayor annually, though no name be given, yet it is a good corporation by the name of the mayor and commonalty, 1 *Salk.* 191. An hospital intended to be built may be incorporated by its intended name before it is erected.

The powers usually annexed to corporate bodies are,  
 1. To have, by descent, election, or otherwise, perpetual succession. 2. To sue and be sued, and do all other acts which individuals may do, in their corporate capacity. 3. To purchase lands, and have a common seal. 4. To make by-laws for the better government of the corporation. But no trading company is allowed to make by-laws which may affect the king's prerogative or the interest of individuals, under a penalty of 40*l.* unless approved by the chancellor, treasurer, and chief justices, or the judges of assize ; and, even though so approved, if contrary to law, they are void.

The constitution of a corporation, as settled by act of parliament, cannot be varied by the acceptance of a charter inconsistent with it, 6 *T. R.* 268.

The surrender of a charter is void if not enrolled. *Rex v. Osborne*, 4 *E. R.* 327.

Dissenters are exempt from becoming members of a corporation, and when elected may refuse to serve, *Cowp.* 393.

When the mode of electing officers is not regulated by charter or prescription, the corporation may make by-laws to regulate the election, 3 *T. R.* 189.

The king cannot, by his prerogative, dissolve a corporation.

Corporations have power to disfranchise a member; an alderman or freeman, however, cannot be removed from his freedom or place without good cause, and a custom to remove him at pleasure is void.

Corporations cannot take a devise of lands, except for charitable uses.

Penalties may be inflicted by by-laws, which may be recovered by distress or action of debt; and a custom of the lord mayor and aldermen of London to commit a citizen for not accepting of the livery was held valid, being for the good government of the city.

A by-law made by a company in a corporation to restrain the number of apprentices to be taken by any of the members is void, *Rex v. Cooper's Company of Newcastle-upon-Tyne*. But a law made by a company carrying on trade in partnership, to prevent any one of the members carrying on a *separate* trade on his own account, is good, 8 *T. R.* 352.

No member can vote in the general courts, unless he has been six months in possession of the stock necessary to qualify him, unless it comes to him by bequest, marriage, succession, or settlement.

A corporation may be dissolved—1. By act of parliament. 2. By the natural death of its members. 3. By surrender of its franchises into the hands of the king. 4. By forfeiture of its charter through negligence or abuse of its privileges; in which case, the law concludes the conditions upon which it was incorporated are broken, and the grant of incorporation forfeited.

## CHAP. VI.

### *Joint-Stock Companies.*

A JOINT-STOCK COMPANY is an association trading upon a joint-stock, each member sharing in the common profit or loss, in proportion to his share in the joint-stock.

Joint-stock companies, established either by royal charter, or by act of parliament, or by both, differ in several respects from private partnerships.

*First*, in a private partnership, no partner, without the consent of the firm, can transfer his share to another person, or introduce a new member into the partnership. Each member, however, may, upon proper warning, withdraw from the firm, and demand payment from them of his common stock. In a joint-stock company, on the contrary, no member can demand payment of his share from the company ; but each member can, without their consent, transfer his share to another person, and thereby introduce a new member.

*Secondly*, in a private partnership each partner is bound for the debts contracted by the partnership, to the whole extent of his fortune. In a joint-stock company, on the contrary, each partner is bound only to the extent of his share, unless a general liability is created by the charter or act of incorporation.

*Lastly*, the trade of a joint-stock company is managed by a board of directors, subject, in many respects, to the control of a general court of proprietors. The Bank of England, the South-Sea Company, and the East-India Company, are examples of joint-stock associations.

#### COMPANIES NOT INCORPORATED.

The laws respecting companies not confirmed by charter, or act of parliament, are the same as in common partnerships ; but the articles of agreement between the parties are usually very different. The capital is generally divided into shares, whereof each party may hold one or more, but restricted to a certain number. Any partner can transfer his share, under certain limitations ; but no partner can act personally in the affairs of the company, the execution of the business being intrusted to officers, for whom the whole company are responsible.

By obtaining a charter, a company acquire the right to purchase lands, to make by-laws, to have a common seal, to sue and be sued in a corporate capacity, and exercise other privileges of a corporation. Sometimes a charter is procured to limit the risk of the partners ; and if any exclusive privilege is desired, which a royal charter cannot grant, an act of parliament is necessary.

During the prevalence of the South-Sea mania, the



6 Geo. I. c. 18, called the "*Bubble Act*," was passed to restrain associations of joint-stock traders, who assumed the power of corporate bodies, by pretending to raise transferable stock, and exercising other franchises, without either charter or act of parliament. All such associations are declared illegal, and made subject to the penalties of *præmunire*.

But, in the session of 1825, the Bubble Act was repealed, so far as it restrained the speculations and practices of joint-stock adventurers, and additional powers granted to the crown with respect to charters of incorporation, to trading and other companies. By the 6 Geo. IV. c. 91, it is provided that in any royal charter, hereafter to be granted for the incorporation of any company, it shall be lawful, by such charter, to provide that the members of such corporation shall be *individually* liable, in their persons and property, for the debts, contracts, and engagements, of such corporation, to such extent, and subject to such regulation and restriction as his majesty may deem fit and proper.

By the partial repeal of the act of Geo. I. and the decisions of the courts on various cases arising out of the numerous speculating associations formed in the spring and summer of 1825, the law respecting joint-stock companies has been much exemplified, and may be shortly stated.

If a company be incorporated, its powers and franchises, and the liability of individual members, is prescribed by the statute or charter of incorporation.

If a company be *not* incorporated, it stands, in all respects, on the footing of a common partnership; the articles of agreement may limit the powers of the members towards each other, but not their responsibility against the claims of a third party. This point was fully established by the lord-chancellor, in the case of the Real del Monte Mining Company, in March, 1825.

His lordship said, "by another clause in the deed, the members of the company do what, as *amongst themselves*, they have a right to do, namely, they confine their responsibility to the amount of their respective shares; an obligation they may certainly enter into if it

is an obligation merely affecting their *own interests*. But it may not be unfit to add that persons should be aware that, however they can limit the responsibility of shareholders, as between themselves, yet, as to *third persons*, they cannot do it; and that EVERY MAN WHO SUBSCRIBES becomes, as to third persons, liable to the extent of every shilling he has or will have in the world." See, also, *Harris v. Perring*, Common Pleas, December 20, 1826.

Another point in respect of unincorporated share companies it is material to impress on the reader. A person by becoming a subscriber to such companies is legally disqualified from recovering for work done on account of such associations; nor can he recover on any bill or note accepted by the director or secretaries of such associations; the acceptance of shares rendering him a *partner* in the undertaking, and, consequently, cuts off his right of action against the firm into which he has entered, *Perring v. Hone*, C. P. November 4 and 22, 1826. A decision on the same principle had been previously made in *Holmes v. Higgins*, and which is mentioned in the next chapter.

Whether a person by accepting shares in an unincorporated company is rendered a *trader*, subject to the bankrupt-laws, has not yet been determined, but the opinion of good lawyers is in favour of such construction. The New Bankrupt Act, 6 Geo. IV. c. 16, after describing the trading which shall subject to the operation of the statute, says, "That no member or subscriber to any incorporated commercial or trading companies, established by *charter* or *act of parliament*, shall be deemed a trader, liable to a commission." Thereby, in effect, constructively enacting that all members of such companies, NOT established by *charter* or *act of parliament*, shall be deemed such traders. It is to be regretted the legislature has not been more explicit on this point; no decision has yet been made upon it in the courts of law, but there seems little doubt that the result would be in favour of the constructive enactment.

With respect to the powers of unincorporated companies to raise stock by subscription, or create transfer-

able shares, the law is the same as prior to the 6 Geo. I. leaving individuals to their prudence and discretion, whether they will, by purchasing shares, render themselves liable as partners in the undertakings of associations unsanctioned by charter or public authority.

## CHAP. VII.

### *Partners.*

PARTNERSHIPS are mercantile associations, in which two or more persons agree to share equally, or in any other proportion, the profit and loss in any trade, bargain, or speculation. To constitute a partnership, and to make a person liable as a partner, there must be an agreement between him and the ostensible person to share in all risk of profit and loss; or he must have permitted him to use his credit, and to *hold him out* as jointly liable with himself.

Though an agreement to share profit and loss is essential to constitute partnership, yet if one take a moiety of the profits without limit, he shall, by operation of law, be made liable to losses. *Waugh v. Carver*, 2 H. B. 247.

An agent who is paid by a proportion of the profits of an adventure does not thereby become a partner in the property, though it may render him liable as a partner to third persons. 5 Taunt. 74, 2 B. & C. 401.

A number of persons agreeing to subscribe sums of money for the purpose of obtaining a bill in parliament to make a railway are partners in the undertaking; and, therefore, a subscriber who acted as their surveyor cannot maintain an action for work done by him in that character, on account of the partnership, against all or any of the other subscribers, *Holmes v. Higgins*, 1 B. & C. 74.

If there is no express stipulation as to the management of partnership property, the majority must decide as to the disposition and management of partnership concerns.

Each partner is not only entitled to his proportion of the partnership estate, according to express agreement,

or what he originally contributed, but he has a lien upon it for any sum of money advanced by him to, or owing to him from, the partnership.

The ends of justice having been frequently evaded in criminal prosecutions by the difficulty of ascertaining the names of *all* the owners of property in the case of partners and other joint owners, the 7 Geo. IV. c. 64, s. 14, provides that, in any indictment or information for felony or misdemeanor, when it shall be necessary to state the ownership of property, it shall be sufficient to name *one* owner; and this extends to all partners in trade, joint tenants, parceners, or tenants in common; as well as to trustees and joint-stock companies.

#### LIABILITY OF PARTNERS.

In all partnerships, the individual partners are liable for the debts of the joint-trade without limitation, unless when incorporated; and then the members are liable for their respective shares; or, according to the 6 Geo. IV. c. 91, in such other degree as the charter of incorporation may prescribe.

In general, it may be stated that the acts of one partner, in the way of sale, purchase, promise, or agreement, when performed without collusion, and in violation of no public law, and in course of the partnership concern, are binding on the whole firm. And this responsibility of partners, for the acts of each other in the course of trade, cannot be limited by any agreement, covenant, or promise, in the articles by which the partnership is constituted.

This principle is, however, subject to some qualification. If one partner can show a *disclaimer*, he will be relieved from responsibility. Or, if there be any particular speculation which he disapprove of, by giving distinct notice to those with whom his partners are about to contract that he will not, in any manner, be concerned in it, they cannot have any claim upon him, as proof of the notice would rebut his *primâ facie* liability. Thus, in *Minnit v. Whitney*, three persons entered into partnership in the trade of sugar-boiling, and agreed that no sugar should be bought but with the con-

sent of the majority; one of them afterwards made a protest that he would no longer be concerned in partnership with them. The other two, after, made a contract for sugars, the seller having notice that the third had disclaimed the partnership, he was not held liable. Neither is there any joint liability for the debt of *one* partner, unless contracted in the course of the partnership concern. So, if the partnership effects are taken, and sold on an execution against one partner only, the sheriff is to pay over to the other partners a share of the produce proportioned to their shares in the partnership effects.

Though a small share in the business renders the shareholder a general partner, and subjects him to the same responsibility as if he held a more considerable share, yet a share in a ship, or other specific object, does not constitute a general partnership; and, therefore, the responsibility is limited to that particular object. By special acts of parliament, in extensive and hazardous enterprizes; as mines, insurance companies, and canals, shares are created to limit the responsibility of the shareholders to the amount of their shares, and exempt them from responsibility as partners.

Dormant, or *sleeping*, partners are liable, when discovered, to the partnership debts. But it would seem, from *Lloyd v. Ashby*, M.T. 1825, that a sleeping partner is not responsible for any bill of exchange accepted by the acting partners in their names, unless such bill relate to the business of the partnership; because, the sleeping partner had neither privity of interest in the bill, not being accepted in a partnership transaction, nor was the bill taken on his credit, as he was not known to be a partner, 2 *Car. & Pay.* 138.

The acts of one partner, in drawing bills of exchange, endorsing such as are payable to the firm, and making and endorsing promissory notes, when they concern the joint trade, bind the firm. But it is otherwise if they concern the acceptor only in a disjoint interest.

A partner, as such, cannot bind his co-partner by deed, 7 *T. R.* 207.

One partner may maintain an action for money received

against the other partner, for money received to the separate use of the former, and wrongfully carried to the partnership account, *Smith v. Barrow*, 2 T. R. 476.

#### DISSOLUTION OF PARTNERSHIP.

By the death of one partner the partnership is dissolved, unless there is an express agreement for the transmission of an interest in the business to the deceased partner's family, or for the continuation of it by his executor or administrator.

Bankruptcy, outlawry, or attain for treason or felony, constitutes a dissolution of partnership.

Where the partnership is formed for a single dealing or transaction, as soon as that is completed, the partnership is at an end, of course. But where a general partnership is entered into, for an unlimited time, it may be put at an end to at any time by either of the parties, so that he does not break off with some sinister view.

A partnership may be dissolved by the expiration of the time for which it was constituted, by award of arbitrators, by the insanity of one of the firm, or by the gross misconduct of a partner, which will induce a court of equity to disannul the contract.

An advertisement in the London Gazette is not sufficient announcement of the dissolution of partnership: notice ought to be sent to all persons with whom the firm had dealings while in partnership.

If a partner, when he retires, draw out of the partnership stock all that he had paid in, the house being insolvent at the time, he will be obliged to refund to the creditors of the other partner.

### CHAP. VIII.

#### *Trustees.*

TRUST is a power vested in a person to manage the property and interest of another, and the duties of the trustees are prescribed by the deed of settlement, or conveyance, by which the trust is created. For breach of trust the remedy is by bill in chancery; the common law generally taking no cognizance of trusts.

## 102 EXECUTORS AND ADMINISTRATORS.

A trustee, not having the whole power, and being obliged to join in receipts, is not chargeable for money received by the other: but where they join in a receipt, and it cannot be distinguished what was received by one, and what by the other, they shall both be charged with the whole. Also, if a trustee be privy to the embezzlement of the trust-fund by his associate, he shall be charged with the amount.

Trustees are accountable for the interest which they either do, or might, make from the employment of the money in their possession. They are, also, accountable for the whole profits they may derive from trading with the trust-fund.

They are not entitled to any allowance for their trouble in the trust, but they will be paid their costs in case of an unfounded suit against them. Also, by a recent decision of the vice-chancellor, trustees are allowed to charge for collecting *weekly rents* under the trusteeship; the labour of such a collection cannot be imposed on trustees, *Wilkinson v. Wilkinson*, March, 1825.

Trustees are controlled by the same principle as assignees in bankruptcy; for they are in no case permitted to purchase from themselves the trust estate, 1 *Vern.* 465, 2 *Atk.* 59; nor their solicitor, 3 *Mer.* 200.

## CHAP. IX.

### *Executors and Administrators.*

An executor is he to whom a man commits the execution of his last will and testament. If the testator make an incomplete will, without naming executors, or if he name incapable persons, or if the executors named refuse to act; in any of these cases the ordinary must grant administration to some person, and the duties of the administrator so appointed nearly coincide with those of an executor.

When a person dies *intestate*, the ordinary is compellable to grant administration to the next of kin. For example, of the goods of the wife to the husband, and of

the husband's effects to the widow, or next of kin, or to both, at his discretion.

If a BASTARD die intestate, without wife or children, or if any other person die without kindred, the king is entitled to the *personal* property as administrator: but, in case of a bastard, it is now usual for the crown to grant administration to some relation of the bastard's father or mother, reserving a tenth-part, or some small portion as a recognition of its rights. The *real* estate falls to the lord of the fee or the king, subject to the wife's right of dower and incumbrances, and it is customary to dispose of it in the same way.

An executor may be appointed either by express words or by words that amount to a direct appointment; but, though a person is appointed executor, he is not bound to act, unless he has performed the offices which are proper for an executor, as, by paying debts due from the testator, or receiving any debts due to him, or giving acquittances, &c.

If there are many executors of a will, and only one of them prove the will and take upon him the executorship, it is sufficient for them all; and, even after the death of the acting executor, the right of executorship survives to them: but if two executors are appointed by will, and one of them prove the will in the name of both, without the consent of the other, this will not bind him who refused the executorship, unless he administers.

If executors waste the goods of the testator, the Court of Chancery will, on the application of creditors, appoint a receiver of the testator's effects, in order to protect them. Or, if they retain money in their hands, they are chargeable with interest and costs, if any have been incurred; but they are not liable for the property of the deceased, unless it has been lost through wilful negligence, or without taking reasonable care to prevent such defalcation. Neither is one executor answerable for money received or detriment occasioned by his co-executor, unless it has been by means of some joint act done by them.

If a creditor make his debtor executor, it is an ex-



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tinguishment of the debt, for an executor cannot sue himself; but still, in equity, the executor's debt is assets with respect to the creditors, if the residue of the testator's estate is not sufficient; because it is extinguished not by way of *release*, but in the way of *legacy*.

The property of a deceased person vests in his executor from the time of his death; in an administrator from the time of the grant of letters of administration.

### DUTIES OF EXECUTORS.

The first thing to be done is to bury the deceased in a manner suitable to his rank in life and the estate he has left behind him. In strictness, no funeral expenses are allowed against a creditor, except for the coffin, tolling the bell, parson, clerk, and bearers' fees; but not for the pall or ornaments. But if there are *assets sufficient*, the allowance is regulated by the rank and property of the deceased.

The next duty of the executor is to *prove the will*, which is done upon oath before the ordinary, or his surrogate; or, in a more solemn form, with the additional oath of one or two witnesses, in case the validity of the will be disputed. This must be done within six months after the death of the testator, under a penalty of 50*l.* by 37 Geo. III. c. 90. After proving the will, the original must be deposited in the registry of the ordinary, and a copy is made upon parchment, under the seal of the ordinary, and delivered to the executor or administrator, together with a certificate of its having been so proved before him: this is called the *probate*.

After obtaining the probate, an inventory must be made of all the goods and chattels, whether in possession or action of the deceased, which, if required, must be delivered to the ordinary upon oath, in the presence of two credible witnesses; and to which, if so delivered, no creditor is at liberty to object.

### DISPOSITION OF THE ASSETS.

All the debts and effects of the deceased collected in become assets in the hands of the executor, chargeable

to creditors, legatees, and kindred of the deceased, and payable in the following order.

1. The executor must pay all funeral charges, the expenses of proving the will, and other necessary outgoings incurred in the execution of the trust. 2. He must pay all debts due to the king. 3. Such debts as are due by particular statutes, as money due on poor-rates, for post-office letters, or to a friendly society. 4. Debts of record on judgment of courts of law, and debts due on mortgage. 5. Debts due on special contract, as for rent in arrear, and debts due on bond and covenant under seal. 6. Debts on simple contract, as promissory notes, bills of exchange, or verbal promises. Among simple contract debts, wages due to servants must be first paid. And, lastly, legacies must be paid.

If an executor pay debts of a *lower* degree first, and, should there be a deficiency of assets, he is bound to answer those of a higher nature out of his own estate.

But it is to be observed that the payment of debts, according to *PRIORITY*, applies only to personal or *legal assets*; when the testator leaves his real estate for the payment of his debts, these are called *equitable assets*, because a court of equity will order all the creditors to be paid an equal share out of this fund. And even when specialty creditors have received part of their debts out of the personal estate, a court of equity will restrain them from receiving any part of the equitable fund till all the other creditors are paid an equal proportion of their debts.

Special bail is not required of executors in any action brought against them. Nor can costs be had against them.

## CHAP. X.

### *Husband and Wife.*

MARRIAGE is a civil contract, in which the wife partly loses her legal individuality, and becomes incorporated with, and subordinate to, her husband.

Upon this principle, a man cannot grant any thing to his wife without the intervention of trustees, or enter

into covenant with her: for the grant would be to suppose her separate existence, and to covenant with her would be to covenant with himself.

For the validity of marriage are requisite, 1. The mutual consent of the parties. 2. The absence of all legal disability, arising out of previous marriage, relationship, or corporal infirmity: but corporal imbecility arising *after* marriage will not vacate the marriage, because there was no *fraud* in the original contract; and one of the ends of marriage—namely, the legitimate procreation of children, may have been answered. 3. The marriage rite must be actually solemnized by a person in holy orders, in a parish church or public chapel, (or elsewhere by special dispensation,) in pursuance of banns or license, between persons of sound mind, and of the age of twenty-one years; or with the consent of parents and guardians, of the age of fourteen in males, and twelve in females. If persons under age marry, either party is at liberty to complete the marriage or not, when they attain maturity. But if a person of *full age* enter into the marriage contract with a minor, the former is bound, though the latter is not.

Fraud will sometimes be a ground for annulling a marriage; as on account of banns having been published, or license obtained under *false names*; but unless the name was assumed for the purpose of defrauding the other party, or the parents, the circumstance of the marriage being in a fictitious name will not invalidate it. Error about the *family* or *fortune* of the individual, though produced by unfair representations, will not at all affect the validity of a marriage, 1 *Chitty's Bl.* 438. 1 *Phil. E. C.* 137. See also *Marriage*, in the DICTIONARY.

Marriages may be dissolved by death or by divorce.

Divorces may be either *absolute* or *qualified*; the first, arising from some of the legal disabilities already mentioned, which renders the marriage void from the beginning, enables the parties to marry again, and destroys the liability of the husband for the wife's debts; the second, from causes which make it improper, or impossible, for the parties to live together, as intolerable ill

*temper* or adultery, in either of the parties. But it seems doubtful whether *ill temper* alone is an adequate cause of divorce; the policy of the law is to consider marriage indissoluble, and courts are slow to interfere, except when something arises which renders co-habitation unsafe, or likely to be attended with injury to the person, or to the health of the party applying, 1 *Haggard's Rep.* 36.

In case of a *qualified* divorce, the law allows ALIMONY, or maintenance to the wife, which is settled at the discretion of the judge, according to the circumstances of the case. It is usually proportioned to the rank and quality of the parties. But, in case of elopement, and living in adultery, the law allows *no* alimony.

#### POWER OF THE HUSBAND.

All the *personal* property, as money, goods, and household furniture, that was the property of the wife at the time of marriage, becomes vested in the husband, and placed at his absolute disposal. But of *real* property, the freehold and inheritance of the wife, the husband can only receive the profits during her life. The law gives the like limited power over any real estate accruing to the wife during coverture.

A married woman has no authority to make a contract without the authority or assent of her husband, express or implied. If a wife sell or dispose of the goods of the husband, the sale is void; or if she buy goods without his consent, he is not chargeable with them. So, also, a note or bill drawn or endorsed by a married woman is void.

A husband may restrain his wife of her liberty in case of gross misbehaviour: but, in case of unreasonable or improper confinement, the law will relieve the wife by *habeas corpus*.

If the wife be injured in her person or property, she can bring no action for redress, without the concurrence of her husband; neither can she be sued without making the husband defendant. An exception to the rule is, when the husband has abjured the realm, or is banished; for then he is dead in law, and the wife may contract and marry again.

In civil and criminal trials, husband and wife are not generally allowed to be *evidence* for or against each other, unless the offence is between themselves; but from this rule there are several exceptions. In treason the wife is admitted as witness for the crown against the husband; so, also, in an indictment for forcible abduction and marriage; and in bigamy, though the first wife cannot be witness, the second may, the second marriage being void.

In bankruptcy, also, by 6 Geo. IV. c. 16, s. 37, the commissioners are empowered to examine the bankrupt's wife, touching the discovery of the estate and property of the husband.

Where, too, the husband has allowed the wife to act as agent in the management of his affairs, or in any particular business, the representations and admissions of the wife, in the course of such agency, are admissible in evidence against the husband. Thus, in an action against the husband for board and lodging, where it appeared the bargain for the apartments had been made by the wife, and that, on a demand being made for the rent, she acknowledged the debt, the plaintiff was held entitled to recover, 1 *Esp.* 142. So, also, the admission of the wife, as to an agreement for suckling a child, was allowed to be evidence against the husband, *Stra.* 527.

#### DEBTS BEFORE MARRIAGE.

If the wife be indebted *before* marriage, the husband is liable to such debts, and *both* may be sued for them during coverture; but if these debts be not recovered against the husband and wife, in the life-time of the wife, the husband cannot be charged with them after her death, unless there be some part of her personal property which he did not bring into his possession before her death, to the extent of which he will be liable to pay his wife's debts. If the wife survive the husband, an action will lie against her for her debts before marriage.

#### LIABILITY TO MAINTENANCE.

A husband is bound to maintain his wife in neces-

*series*, according to his rank and estate; and if she contract debts for them he is answerable. But if the wife voluntarily leave her husband, without sufficient cause, and without his consent, he is not bound, on giving notice to a tradesman of his dissent to her absence. And, with respect to the *necessaries* for which the husband is liable, they must be really such; for example, they must not be superfluous dresses, which the wife has no occasion for, nor articles of jewelry, unsuited to the condition, rank, and income of the husband, *Montague v. Benedict*, 3 B. & C. 631.

Though the wife is lewd, if she *cohabit with her husband*, he is chargeable for necessaries; and so he is if he desert her, or turn her away, without reasonable cause, or compel her, by ill-treatment, to leave him, although he advertise her, and caution all persons not to trust her, or give particular notice to individuals not to give her credit, still he will be liable for necessaries furnished to her.

But if a wife *elope* from her husband, and live in adultery, the husband cannot be charged by her contracts. And although the husband was the aggressor, by living in adultery with another woman, and, although he turned his wife out of doors, when there was not any imputation on her conduct, yet, if she *afterwards commit adultery*, he is not bound to receive or support her after that time; nor is he liable for necessaries which may be provided for her after that time, 6 T. R. 603. Neither, when the husband turns his wife out of doors, on account of her having committed adultery under his roof, is he liable for necessaries furnished after her expulsion. Yet, if he receive her again, his liability revives, and attaches upon contracts made by her after the reconciliation, 11 Ves. 536; 6 Mod. 172.

If a woman elope from her husband, though not in an adulterous manner, the husband is not bound.

The husband is liable to pay the wages of a servant hired by the wife, after the servant had performed the service with the knowledge of the husband, 1 Esp. 200.

In *Williams v. Fowler*, the plaintiff, the attorney of the wife, obtained his costs in a suit instituted against the husband on account of the wife, 1 *M'Clel. & Yo.* 269. When there is separation by consent, and the wife has a separate allowance, those who trust her, *knowing* of such separation and maintenance, do it upon her own credit. But a prohibition in general, by putting her in the newspaper, is no legal notice not to trust her; the knowledge of the separation and maintenance must be *brought home* to the tradesman with whom the wife deals.

Where credit has been given to the wife of a man who has abjured the realm, or is transported, she alone is liable, 1 *T. R.* 8, 9. But by no agreement between a man and his wife for separation and maintenance can she be made legally responsible for the contracts she may enter into, or be liable to the actions of those who may have trusted to her engagements as if she were a single woman, *Marshall v. Rutton*, 8 *T. R.* 545.

An action for *crim. con.* cannot be brought for adultery *after* a separation between husband and wife, *Weedon v. Timbrell*.

It appears, from a recent case, a wife is justified in leaving her husband, where she has *reasonable* ground to apprehend personal violence, without waiting until *actually committed*; and in this case the husband is liable for necessities furnished during her separation, *Houliston v. Smyth*, 3 *Bing.* 127.

If a man cohabit with a woman, and permit her to assume his name, and appear to the world as his wife, and, in that character, to contract debts for necessities, he becomes liable, though the creditor is acquainted with her real situation, and though the man be married to another woman; but this rule only holds during cohabitation, 2 *Esp.* 637; 4 *Camp.* 215.

If a man marry a woman with CHILDREN he is not bound to maintain them, by the act of marriage; but, if he hold them out as part of his family, he will be considered to stand in place of the parents, and liable even to a contract made by his wife, during his re-

sidence abroad, for their maintenance and education, 4 *East.* 82.

A husband cannot be charged for *money lent* to his wife, even for the purpose of buying necessities, because it may be misapplied, 1 *Salk.* 387. But if the money be laid out in necessities, equity will consider the lender as standing in the place of the person providing the necessities, and decree relief.

By the custom of London, if a wife trade by herself, in a trade with which her husband does not meddle, she may sue and be sued on her own account; but this does not extend to any suit in the superior courts at Westminster.

## CHAP. XI.

### *Parent and Child.*

CHILDREN are either legitimate or bastards, and, according as they fall under one or the other description, are subject to different legal qualifications.

A *legitimate* child is one born in lawful wedlock, or within a competent time after a lawful marriage.

Independent of the obligations imposed by nature, parents are compelled, by law, to provide a maintenance for their offspring. By the 43 Eliz. c. 2, the father and mother, grandfather and grandmother, of poor children, unable to work, either through infancy, disease, or accident, are bound to provide them with necessities, at the rate of 20s. a month, or 13l. a year.

By 5 Geo. IV. c. 83, persons being able, but wilfully neglecting, by work, to support their families, whereby they become chargeable to the parish, shall be deemed idle and disorderly persons, punishable by imprisonment and hard labour, not exceeding a month; and every person running away and leaving his wife or child chargeable, shall be deemed a rogue and vagabond.

Also, by 5 Geo. I. c. 8, if a parent run away and leave his children, the churchwardens and overseers of the parish may seize his rents, goods, and chattels, and dispose of them towards their relief.



The 59 Geo. III. c. 12, provides for the application of the allowance of Greenwich pensioners, the wages of seamen, and other persons in public employments, who abscond from their families.

The *legal* power of a father (for a mother, as such, is entitled to no power) over the persons of his children ceases at the age of 21 years.

A parent may lawfully correct a child, being under age, in a reasonable manner, and this authority he may delegate to a tutor, or schoolmaster, who may exercise such power of restraint and correction as is essential to the object for which he is employed.

The laws impose certain duties on children towards their parents. A child is justifiable in defending the person and maintaining the cause of a parent; and, by the 43 Elizabeth, is compellable, if of sufficient ability, to provide for his support; and this he must do for an unworthy progenitor as for one who has shown the greatest tenderness in the discharge of his parental duties: but the obligation extends only to relations by blood, not by marriage; so that a husband is not bound, even while his wife is alive, to support *her* parents.

With respect to EDUCATION, the laws have made no direct provision; while they have taken abundant precautions to shield Protestant children from the tyranny of Popish and Jewish parents, and compelled them to maintain them, they have failed to prescribe any course of instruction by which a knowledge of true religion may be obtained, and an independent subsistence acquired.

#### BASTARDS.

A BASTARD is not only one who is begotten, but born out of lawful matrimony; or is born so long after the death of the husband, that, by the usual course of gestation, he could not be begotten by him.

But, in the *first* place, if the child be begotten while the parents are single, and they marry a few months after, the child is not a bastard, though begotten out of wedlock; for the child is legitimated by the recognition of the husband, 8 East. 93. And, in the *second*, though

the usual course of gestation is nine calendar months; the law is not particular; and if the child be born within a few days of that time, it is accounted legitimate.

The legitimacy or illegitimacy of the child of a married woman, living in a notorious state of adultery, is a question for a jury to determine. But, in general, during coverture, the children are accounted legitimate; unless the absence of the husband, beyond the seas, or some other circumstance, renders it naturally impossible that the husband should have had such intercourse with his wife as to be the father of the child.

If the wife have children after separation by divorce, they are bastards; but, in a voluntary separation, by agreement, the law supposes access, unless the negative be shown.

The father of an infant *legitimate* child is entitled to the custody of it, but the mother of an *illegitimate* child is preferred to the putative father; and if the putative father of a bastard obtain possession of it by fraud the court will order it to be restored, on the application of the mother, *Rex v. Sope*, 5 T. R. 278.

A bastard has no rights but what he can acquire; being, in the eye of the law, the son of nobody, he cannot be heir to any one, nor have heirs, but of his own body. He has, legally, no name, except that he gains by reputation. By the common law, he is incapable of holding any ecclesiastical benefice; for the administration of the sacraments cannot be committed to infamous persons. All other children have their settlement in their father's parish, but a bastard where he is born. Bastards, however, born in any licensed hospital for pregnant women, are settled in the parish to which the mother belongs.

A bastard may be made legitimate by act of parliament.

#### MAINTENANCE OF BASTARDS.

When a bastard child is born in a parish, for whose sustenance the parents do not provide necessities, the

parish officers are obliged to do it, without an order of magistrates for that purpose, 1 *H. B.* 253.

The reputed fathers of bastard children are chargeable with their maintenance. They are also chargeable with the expenses incident to the accouchement, with the costs of apprehending, and the order of filiation, not exceeding 10*l.*, 49 *Geo. III. c. 68.* But these charges and costs are subject to the discretion and allowance of the magistrates, or the court of quarter sessions making the order.

The order must be made by two justices or more, 2 *Salk.* 477; and may be made any time after the birth of the child. No order can be made unless the child be born alive, 14 *East.* 277.

The order may be made upon the mother as well as the father. The order made must be reasonable, and not more than necessary to indemnify the parish for the maintenance of the child, *Comb.* 69.

No person can be *committed* for refusing to find sureties, but he may for refusing to obey an order, unless upon security given to perform it, or abide the order made at the next sessions, 6 *T. R.* 148.

By 49 *Geo. III. c. 68.* if a party do not obey the order made by the quarter sessions, or made by two justices and confirmed by the sessions, or where it has not been appealed against, a justice, on complaint by the overseer, and on proof, on oath, of the order and of the money being unpaid, and of a demand and refusal to pay, or of the offender having avoided such demand, shall issue his warrant of apprehension; and if the party still refuse to pay without sufficient cause, the justice is to commit him to gaol for three months, to hard labour, unless, in the mean time, he pay the money due; and the like proceedings may be adopted on every subsequent breach of the order.

Unless, however, we repeat, the party *refuse* to obey an order, the magistrates have no power to commit him, or to demand sureties for the performance of it, or for appearing at the sessions, 2 *Ray*, 858; 3 *Salk.* 66.

An appeal against an order of filiation must be to the

next sessions, ten days' previous notice being given to the justices and overseers.

If the putative father, when before the magistrates, agree to indemnify the parish, the security given is vested in the overseers, who, as a corporate body, may sue, as such, upon the instrument. Indemnity, however, is all the parish is entitled to, and, therefore, whatever the penalty of the bond may be, if the child die, or, in any way, cease to be a charge before that sum is expended, the father is only liable for the expense *actually* incurred. So, if, in compliance with a very reprehensible custom, the father has paid a gross sum of money to the parish, for his entire discharge, and the child should die, or cease to be a burthen before that sum is expended, the father may recover back the difference; if he could not, it would be the interest of the parish to neglect the child, as they would be gainers by its death.

No woman can be *compulsively* questioned concerning the father of her child till one month after her delivery.

But, as the 35 Geo. III. has made single women with child *actually chargeable*, (see page 90,) she may be compelled to go before a magistrate, even before delivery, in order to her removal to her last place of settlement. She must, then, of course, answer such questions as are necessary for the purpose of strict inquiry; and, *if she pleases*, she may depose to the father of the child.

If the father or mother abscond, their property may be seized by the parish, as in the case of a legitimate parent running away and leaving his family chargeable.

## CHAP. XII.

### *Guardian and Ward.*

GUARDIAN is a temporary parent of the child for so long a time as the ward is an infant, or under age.

If an estate be left to an infant, the father is, by common law, the guardian, and must account to his child for the profits.

A father may, by deed or will, dispose of the custody of his child, either born or unborn, till such child attains the age of 21 years. These are called guardians by statute, or testamentary guardians.

There are, also, *special guardians*, by custom of London, and other places. By the custom of London, if the father is a freeman of London, he cannot devise the disposition of the body of his child; but the court of orphans shall have the custody of the body and goods of the child of every freeman and freewoman, within age, and unmarried.

As to persons considered within age, the period is different between males and females. A male 12 years old may take the oath of allegiance; at 14, is at years of discretion, and may consent, or not, to marriage; and, if his discretion be actually proved, may dispose, by will, of his personal estate; at 17, he may be an executor, and, at 21, is at his own disposal, and may alienate his lands, goods, and chattels. A female, at 7 years of age, may be betrothed, or given in marriage; at 9, is entitled to dower; at 12, is at years of maturity, and may consent, or not, to marriage; at 17, may be executrix; and, at 21, may dispose of herself and lands.

So that full age, in male or female, is 21 years, which day is completed on the day preceding the anniversary of a person's birth.

The power and reciprocal duties of guardian and ward are the same, during the infancy of the ward, as that of a parent and child; with this difference, that the guardian, when the ward comes of age, is bound to give him an account of all transactions on his behalf, and must answer for all losses by his wilful default and negligence.

Marrying a ward of the Court of Chancery without the consent of the court, is a contempt for which the party may be committed or indicted, though he was ignorant of the wardship. To clear such a contempt, a proper settlement must be made on the ward; and even that does not necessarily purge the contempt, 8 Ves. 74.

## LIABILITY OF INFANTS.

In law, a person is styled an infant till he attains 21 years, which is termed *full age*; and, until that period, his actions are placed under a peculiar criminal and civil jurisprudence.

Under the age of 7 years, he cannot be capitally punished for any criminal offence; but at 14 he may. The period between the age of 7 and 14 is subject to great uncertainty; for, generally, the responsibility depends on the capacity to discern the good and evil tendency of actions.

Sir Matthew Hale gives two instances of capital convictions under the age of 14: one, of a girl of 13, who was burned for killing her mistress; another, of a boy, still younger, that had killed his companion, and hid himself, who was hanged; for it appeared, by his hiding, that he knew he had done wrong, and, in such cases, the maxim of the law is—*malice is equivalent to age*.

In civil matters, the law is so indulgent to infants as to allow them to contract for their *benefit*, but not otherwise. Thus, an infant may bind himself apprentice, because it is for his advantage. So, also, he may be bound, after he attains 21, to pay for meat, drink, physic, and other *necessaries*, furnished during his infancy; as, likewise, for good teaching and instruction. This binding means by *parol*; for, as an infant is not bound by any bond, note, or bill, which he may give, even for necessaries, the law will imply a *promise*, by the infant, to pay for the necessaries furnished for his maintenance, where no promise has been made. With respect to schooling, the infant is bound only where the credit was really given to him. In all cases, however, where the infant is under the power of his parents, and is living in the same house with them, he will not then be liable even for necessaries.

In order to recover, it must appear that the things were actually *necessary*, and of reasonable price, and suitable to the infant's condition, rank, fortune, and estate; which points must be left to the jury to determine.

An infant is not chargeable on a contract for goods supplied to carry on trade; neither is he liable for *money* which he borrows, to lay out for necessities, though he actually does lay it out for necessities.

But if a person, after attaining his full age and before any action brought, expressly and voluntarily promise to pay a demand upon him, though not for necessities, he will thereby be rendered liable. Therefore, an express promise made, after the infant's attaining maturity, to pay a bill of exchange accepted by him during his infancy is binding on him, 4 *Esp.* 187.

If an infant be partner with another, and hold himself out as such, and do not, on reaching maturity, give notice of a dissolution, he is bound by the subsequent contracts of the firm, *Goode v. Harrison*, 5 B. & A. 147.

## CHAP. XIII.

### *Masters, Servants, and Apprentices.*

THERE are three sorts of servants recognized by the laws of England: *first*, menials, or such as live within the household of the master; *secondly*, labourers, who are only hired by the day, the week, or the year, and do not live with the family of their employer; *thirdly*, apprentices, whose service is regulated by deed of indenture.

The relation between master and servant arises from the *contract of hiring*, and, of course, where there is no previous contract for any determined period of service the relation of master and servant does not subsist.

If the hiring be general, without any particular time mentioned, the law construes the hiring to be for a year; and, in that case, a quarter's warning must be respectively given before the contract can be dissolved.

But it would seem, from the case of *Robinson v. Hindman*, that, if no special contract be made, a domestic or menial servant is entitled only to a month's warning, or a month's wages in lieu of it.

A servant may be discharged, without notice, for incontinence or moral turpitude.

If a servant, hired for a year, happen, within the time, to fall sick, or be hurt, or disabled, in the service of his master, the master cannot put him away, or abate any part of his wages for that time.

A master may support his servant in an action at law against a stranger, or may bring an action against another for beating or maiming him, assigning, as a ground for the action, a loss of service; or he may even justify an assault in his defence; as may a servant in defence of his master.

#### GIVING A CHARACTER.

A master is not bound to give a servant a character, 3 *Esp.* 201; but, if he do give a character, he must take care to give a true one; though, if the character be given without malice, and to the best of his knowledge, no action lies.

If any person give a false character of a servant, or a false account of his former service; or if any servant bring a false character, or alter a certificate of character, he forfeits, upon conviction, 20*l.* with 10*s.* costs.

#### LIABILITY OF MASTERS.

In general, masters are liable for the acts of their servants done, in course of business, by their command, expressed or implied.

If a servant commit a trespass by the command of his master, the master is guilty of it, though the servant is not exonerated; for he is only to obey his master's *lawful* commands. If an innkeeper's servant rob his guests, the master is bound to restitution. So, if I pay money to a banker's servant, the banker is answerable for it; but, if I pay money to a clergyman or physician's servant, whose usual business is not to receive money for his master, and he embezzle it, I must pay it over again. If a steward lease a farm, without the owner's knowledge, the owner must stand to the bargain; for this is the steward's usual business.

A wife, a friend, or relation, that usually transacts business for a man, are, so far, his servants; and the principal must answer for their conduct.



Again, if I deal, usually, with a tradesman, by myself, or constantly pay him ready money, I am not answerable for what my servant buys on trust; for here is no implied order to trust my servant; but, if I usually send him upon trust, or sometimes upon trust and sometimes with ready money, I am answerable for all he takes up; for the tradesman cannot possibly distinguish when he comes by my order and when he comes upon his own authority.

Lastly, a master is answerable for the *negligence* of his servant. If a smith's servant lame a horse while he is shoeing him, or if the waiter at a tavern sell a man bad wine, whereby his health is injured, an action lies against the master, not against the servant. A master is chargeable if any of his family lay, or cast any thing into the street, or highway, to the injury of an individual, or to the common nuisance of the public; for the master has the superintendence and charge of his household.

But when the act of the servant is *wilful*, the master is not responsible, unless the act is done by his command or assent.

If a servant, through negligence, set fire to a dwelling-house, he is subject, by the 14 Geo. III. c. 78, to a fine of 100*l.* or, in default of payment, may be committed to the house of correction, to hard labour, for eighteen months.

#### LABOURERS AND ARTIFICERS.

By the 5 Eliz. c. 4 & 5, all single men between twelve years of age and sixty, and married men under thirty years of age, and all single women between twelve and forty, not having any visible livelihood, are compellable, by two justices, to go out to service in husbandry, or certain specific trades. If any artificer or labourer, retained to work by the piece, leave his work unfinished, unless it be that his wages are not paid, or other *lawful* excuse, he may be imprisoned one month, and fined 5*l.* to his employer.

Artificers and labourers, hired by the day or week, shall, between the middle of March and September, be

at their work at five o'clock in the morning, and continue it till between seven and eight in the evening; and between September and March, they are to be at work by break of day till night, bating the time for breakfast and dinner.

Persons retained in husbandry cannot leave the hundred to serve in any other place, without producing a testimonial from the constable and two housekeepers of the district where they last served.

By the 20 Geo. II. c. 9, differences between masters and servants in husbandry, or artificers and handicrafts; colliers, keelmen, glassmen, and other labourers, may be determined by a justice of the peace, who is to examine upon oath, and make order for payment of wages, provided the sum in dispute does not exceed 10*l.* with regard to servants, or 5*l.* with regard to other persons; and, on non-payment within twenty-one days, it may be levied by distress. The 31 Geo. II. extends this act to all servants employed in husbandry, though hired for less than a year.

By the 4 Geo. IV. c. 34, if any servant in husbandry, artificer, calico-printer, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, contract to serve, and shall not enter into such service, or shall absent himself before the term of his contract be expired, or guilty of any misconduct, he may be committed to the house of correction to hard labour for not exceeding three months; or, in lieu thereof, the whole or a proportional part of his wages may be abated.

The 1 Geo. IV. c. 93, makes some salutary regulations for restraining a reprehensible practice, common in some parts of the country, of compelling workmen to receive their wages in *provisions* or *goods*, in lieu of money or bank-notes. By this act, persons so offending, concerned in the employment of artificers, workmen, or labourers of the descriptions mentioned in several acts from the 4 Edw. IV. to 58 Geo. III. c. 51, inclusive, are subject to a penalty of 20*l.* in addition to other penalties, with full costs of prosecution; a moiety of the penalty, in many cases, to be given to the informer.

The jurisdiction of magistrates, under these statutes,

is limited to servants in husbandry, and the trades specified in the statutes. For other laws interesting to labourers and artificers, see chapter on WORKING CLASSES.

#### APPRENTICES.

By 5 Eliz. c. 4, churchwardens and overseers, with the consent of two justices, may bind or apprentice the children of the poor, and if any refuse to accept such poor apprentice, they shall forfeit 10*l*.

Justices, or the sessions, may hear and determine disputes between masters and apprentices, and the sessions may quash the indentures on default either of master or apprentice. If a parish apprentice is discharged on account of the misconduct of the master, the justices may order the master to deliver up the clothes, and to pay a sum not exceeding 10*l*. to place him with another master, 32 Geo. III. c. 57.

These powers are extended, by the 4 Geo. IV. c. 29, s. 2, to apprentices whose premium does not exceed 25*l*. And, by the same act, when the magistrates direct an apprentice to be discharged, they may order the whole or a part of the premium to be refunded.

Whatever an apprentice gains is for the use of his master, and whether he was legally bound or not is immaterial, if he were an apprentice *de facto*. And an apprentice leaving his master's service must serve beyond the term for the time he was absent, if it be within seven years after the expiration of the term.

If a master give an apprentice license to leave him he cannot afterwards recall it. And if a master discharge an apprentice for negligence, equity will decree him to refund a proportional part of the premium.

By the custom of the city of London, a freeman may turn away his apprentice for gaming.

A master may correct and chastise his apprentice for neglect or misbehaviour, provided it be done with moderation; but his mistress is not entitled to the same power.

By the 4 Geo. IV. c. 34, s. 3, apprentices misbehaving or absconding may be punished by the abatement of the whole or part of their wages, or be committed to

the house of correction for any period not exceeding three months.

The same act, in case of the absence of the master or mistress, empowers the magistrate to direct the payment of wages due to an apprentice, by the steward, manager, or overseer, to any amount not exceeding 10*l*.

Apprentices are not assignable even by a justice of peace. But, by the custom of London, they may be turned over.

The 5 Eliz. c. 4, prohibiting the exercise of *certain* trades, unless by a person apprenticed thereto for seven years, is repealed by 54 Geo. III. c. 96; with a saving clause for the customs and by-laws of London, and other cities, and of corporations and companies lawfully instituted.

By the death either of the master or apprentice, the interest, being a mere personal trust, is determined. But if the master covenant to find the apprentice, during the term, in necessaries and clothing, the death of the master will not determine the obligation, but his executors will be bound to perform it as far as they have assets.

A commission of bankruptcy discharges an apprentice, and a part of the premium must be repaid by the assignees, proportioned to the term of the apprenticeship unexpired. 6 Geo. IV. c. 16.

Indentures of apprenticeship must be enrolled, in all towns corporate, and, in London, in the Chamberlain's Office.

To be valid, all indentures must be stamped.

Apprentices are protected from naval impressment. But, by 7 & 8 Geo. IV. c. 4, if any apprentice, concealing his apprenticeship, enlist into the army, he is subject to two year's imprisonment and hard labour in the house of correction, and may be indicted for obtaining money under false pretences.

## CHAP. XIV.

*Professional Classes.*

## LAWYERS.

LAWYERS, or counsellors, for the terms are nearly synonymous, are of two sorts or degrees, *barristers* and *sergeants*. The former are admitted to plead at the bar, and take upon them the defence of clients, after a certain period of attendance in the inns of court. A *sergeant* is a more venerable description of the learned profession, created by the king's writ, and who, from being more intimately acquainted with the practice of the common law, enjoys the exclusive privilege of pleading in the Court of Common Pleas.

From both these degrees the king's counsel are selected; the two principal of whom are the attorney and solicitor general. They are not allowed to be employed in criminal prosecutions against the crown without a license, which is never refused, but the obtaining it costs about nine pounds.

It is usual to grant patents of *precedence* to such barristers as the king thinks proper to honour with that distinction; by which they are entitled to such rank and *pre-audience* as is assigned in their respective patents. These, as well as the queen's attorney and solicitor general, rank, promiscuously, with the king's counsel, and, together with them, sit within the bar of the court, but receive no salaries, and are not sworn, and therefore are free to be retained in causes against the crown.

*Pre-audience*, or the right of being first heard by the court, is a point of so much importance at the bar, that it may be proper to state the order of precedence, as settled by royal mandate, dated 14th December, 1814,

1. King's Attorney-General
2. King's Solicitor-General
3. King's Premier Sergeant
4. King's Ancient Sergeant
5. King's Advocate-General
6. King's Sergeants

7. The King's Counsel, with the Queen's Attorney and Solicitor
8. Sergeants at Law
9. Recorder of London
10. Common Sergeant of London (by courtesy)
11. Advocates of the Civil Law
12. Barristers.

A lawyer has privilege to enforce any thing communicated to him in his professional capacity, if pertinent to the matter in issue, and is not bound to examine whether it be true or false. But to bring an observation within the rule of being spoken in judicial course, it must be strictly relevant to the matter in issue; and the client's ignorance of what is, or is not, so relevant, will often protect *him* before the court, where the advocate, from the presumption of superior legal knowledge, would not stand excused.

By the 3 Edw. I. c. 29, any sergeant-pleader, or the like, attainted of using deceit in the king's court, shall be imprisoned a year and a day, and, thenceforth, not be heard to plead in the court.

By the 3 Jac. I. c. 5, no recusant convict shall practise the common law as a counsellor; but, by 31 Geo. III. Roman catholics, taking the oaths prescribed by that statute, may act as barristers.

A counsellor can maintain no action for his *fees*, which are given, not as a salary or hire, but as a mere gratuity, which a barrister cannot demand without injury to his reputation. On the other hand, a client cannot maintain an action to recover back a fee to counsel for negligence, want of zeal, or skill in the conduct of his cause; nor even if he fail to attend to argue a cause, for which he has received a fee, *Peake's R.* 122. But if counsel accept a fee, and become counsel, and discover his instructions to the opposite side, an action lies. And a counsel signing a bill in chancery containing scandalous or impertinent matter, he is, on complaint, liable to pay costs.

It appears neither counsel nor attorneys have a legal right to be present in any ex-parte proceeding before a

grand jury, nor in an examination for felony before a magistrate, 3 *B. & A.* 432.

Sergeants and barristers rank esquires, and their eldest sons are qualified to kill game. They are privileged from arrest for debt, while attending their professional duties; and in any action against them, are entitled to have the venue laid in Middlesex.

#### ATTORNEYS AND SOLICITORS.

Attorneys and solicitors are persons duly admitted into the king's courts, and are considered public officers belonging to the courts of justice in which they are admitted. As they enjoy certain privileges on account of their admission, so they are peculiarly subject to the censure and animadversion of the judges, who exercise summary jurisdiction over them, not merely in cases where they have been employed in the conduct of suits, or any matter purely professional, but wherever the employment is so connected with their professional character as to afford a presumption that it formed the ground of their employment. Thus, one attorney has been compelled to return part of an apprentice premium, 3 *B. & A.* 257; one to give up papers and deeds, which had been placed in his hands as steward for the owner of the estates to which they refer, 3 *T. R.* 275; and another to pay over money which he had received, when employed to collect the effects of an intestate, by the administrator, although he had never been employed by him to prosecute or defend any suits in law or equity, 4 *B. & A.* 47.

By the 3 *Jac. I. c. 7*, attorneys shall not be allowed fees to counsel without they produce receipts signed by counsel; and they are to give in true bills to their clients. If they delay the client's suit, or demand more than fees and disbursements, they are to pay costs and treble damages and be disqualified. None shall be admitted attorneys in any court but persons brought up in that court, or well skilled therein. And no attorney shall permit another to follow a suit in his name under a penalty of 20*l.*

By the 12 *Geo. I. c. 29*, attorneys and solicitors, acting in any court of record, convicted of forgery, perjury,

or of stirring up lawsuits, may be transported as felons, in a summary way.

By the 2 Geo. II. c. 23, attorneys shall be sworn and admitted by the judges, who are to examine into their capacity before admission, and attorneys and solicitors, before admission, are to take an oath to demean themselves honestly in their profession.

Attorneys shall not bring any action for fees till a month after delivery of bills; and parties may, in the mean time, get them taxed, and if reduced a sixth part the attorney is to pay the costs of taxation, 2 *Anst.* 494.

By the 6 Geo. II. c. 29, attorneys of the superior courts, being qualified, may be admitted of the inferior courts. Quakers may be enrolled as attorneys on their affirmation.

By the 12 Geo. II. no attorney, while he is in prison, or within the rules, shall commence any suit in his own name, or another, on pain of being struck off the roll and incapacitated to act in future; and any person permitting him to sue in his name shall be struck off the roll, and, in like manner, incapacitated; but he may carry on suits commenced before his confinement.

Clerks, before they are admitted, are to make affidavit of having served five years. But, by 7 Geo. IV. c. 44, a bachelor of arts or bachelor of law, either in the University of Oxford, Cambridge, or Dublin, may be admitted on having actually served as clerk three years, to an attorney, solicitor, or six-clerk, duly sworn and admitted.

By the 34 Geo. III. c. 14, which first imposed the duty on articles of clerkship, no clerk shall be admitted unless the indenture be enrolled within six months, with an affidavit of the payment of the duty. And, by 7 Geo. IV. c. 44, articles of clerkship cannot be stamped after the expiration of six months from the date.

By the 6 Geo. IV. c. 46, no articulated clerk entitled to be admitted an attorney is disqualified by his employer having omitted to take out his annual certificate, as directed by the 37 Geo. III. c. 90.

Attorneys, when plaintiffs, may lay the venue in Middlesex; but when defendants have no privilege to change



the venue to Middlesex, 3 *T. R.* 573. They are not obliged to put in special bail when defendants; but, when they are plaintiffs, they may insist on special bail in allailable cases.

An attorney has no privilege under the London Request Act, nor in a proceeding on the custom of foreign attachment in the city, *Ridge v. Hardcastle*, 8 *T. R.* 417.

An attorney is bound to use care, skill, and integrity; but he is not responsible for any error or mistake arising in the exercise of his profession, 4 *Burr.* 2061.

An attorney mixing purchase money received with his own, and paying it into his banker's hands on his own private account, has been held liable, in the event of the banker's failure, *Robinson v. Ward*, 1 *Ry. & M.* 274.

#### PHYSICIANS.

By the 14th and 15th Henry VIII. the king's charter for incorporating the College of Physicians of London is confirmed; they are to choose a president, and have perpetual succession, a common seal, and ability to purchase land and make by-laws. Eight of the chiefs of the college are to be called *elects*, who, from among themselves, are to choose a president yearly.

Physicians in England shall be examined by the College, and have testimonial letters from the president and three elects, unless they be graduate physicians of Oxford or Cambridge. Physicians practising in London, or within seven miles, without being approved, forfeit 5*l.*; and, in any other part, unless approved by the bishop of the diocese, they are subject to the like penalty.

By the 32 Hen. VIII. c. 40, four physicians shall be chosen by the College to search apothecaries' wares, and, in company with the warden of the mystery of apothecaries, may destroy adulterated drugs. Apothecaries refusing to be searched forfeit 5*l.* and physicians to act, 40*s.*

Physicians in London may practise surgery.

The fees of a physician, like those of a lawyer, are honorary, and not demandable of right; consequently, a physician cannot maintain an action for them, 4 *T. R.* 317.

## SURGEONS.

By the 32 Henry VIII. the barbers and surgeons were incorporated into one company, but, at the same time, a distinct line of division was drawn between the practice of the two branches of the profession. By this act, no person practising the art of barbery is to intermeddle with that of surgery, except as to drawing of teeth, which barbers may continue to do as before ; and, on the other hand, no person devoting himself to surgery is to exercise what is pithily called " the feat or craft " of shaving.

By the 18 Geo. II. the union of surgeons and barbers of London is dissolved, and the surgeons of London were made a separate corporation, with power to enjoy the same privileges as by former acts or grants.

Candidates to serve as surgeons in the army or navy shall be examined by the Surgeons' Company.

By the 25 Geo. II. the bodies of murderers, convicted and executed in London or Middlesex, shall be delivered to Surgeons' Hall ; and, in any other county, to such place as the judge shall direct.

By the 34th & 35th Henry VIII. any subject of the king, having knowledge of the nature of herbs, may minister to any outward sore, wound, or disease.

An action on the case lies against a surgeon for gross ignorance and want of skill in his profession, as well as for negligence and carelessness, to the injury of a patient, *Seare v. Prentice*, 8 E. R. 348.

## APOTHECARIES.

Apothecaries were originally associated with the grocers, but obtained a separate charter of incorporation from James I. in 1606.

By the 6 Will. III. c. 4, apothecaries free of the company in London, practising there, or within seven miles, are exempt from parochial offices, and from serving on juries, producing a testimonial of their freedom. Apothecaries in other parts, brought up in such art, or having served an apprenticeship of seven years, are also exempted.

In the session of 1815, an important act, the 55 Geo. III. c. 191, passed, for regulating the practice of apo-

thecaries through England and Wales. By this act, the masters and wardens of the Apothecaries' Company, or persons appointed by them, may enter the shop of apothecaries, and examine drugs, and impose and levy fines for such as are unwholesome or adulterated. Penalty for the first offence, 5*l.*; for the second, 10*l.*; for the third, and every subsequent offence, 20*l.*

Any apothecary refusing to compound, or unfaithfully compounding the prescription of a regular physician, is liable to be fined 5*l.*; and for a third offence of the same kind, forfeits his certificate.

By the same act, amended by the 6 Geo. IV. c. 133, no apothecary, after the 1st of August, 1815, (except persons in actual practice on or before that period,) is to practise, unless he has received a certificate of being duly qualified. No person can be admitted to be examined unless he be twenty-one years of age, and have served an apprenticeship of, at least, five years with an apothecary or a surgeon. Penalty for acting without certificate, 10*l.* or if only an assistant, 5*l.*

By the same acts, no apothecary shall be allowed to recover any charge claimed by him in any court of law unless he was in actual practice on or before the 1st August, 1815, or that he has obtained a certificate to practise as an apothecary.

By the 6 Geo. IV. surgeons in the navy and surgeons and apothecaries in the army may practise without certificate from the court of examiners, or without having been in actual practice prior to 1st August, 1815.

In the constructions by the courts under these acts, it is held that an apothecary who claims an exemption, on account of having practised *prior* to the 1st August, must have actually exercised his proper vocation,—namely, the making up a *physician's prescription*; without this, unless he has received a certificate, he cannot recover for medicines, *Apothecaries' Company v. Warburton*, 3 B. & A. 40.

In an action to recover the amount of an apothecary's bill, the plaintiff, who proves a certificate from the Society of Apothecaries, need not also prove an apprenticeship served, *Sherwin v. Smith*, 1 Bing. 204.

The acts do not extend to chymists and druggists.

## CHAP. XV.

*Principal and Factor.*

A FACTOR is the agent of a merchant or trader, constituted by letter of attorney, and whose power and responsibility are generally limited by the commission of his principal.

If a factor buy goods on account of his principal, where he is used so to do, the contract will bind the principal to a fulfilment of the bargain. But where goods are bought or exchanged without order, it is at the merchant's option whether he will accept of them or turn them on the factor's hands.

Until the late alteration, the law was extremely hard upon *third parties*, in their transactions with factors, or agents. *First*, in case of advances made to factors, or agents, upon security of merchandize, in ignorance of their not being the owners of the property, the party so advancing might be deprived of his security. *Secondly*, in case of purchases of merchandize from factors, or agents, not invested with the power of sale, though that fact is unknown to the purchaser, yet the purchaser would be liable to pay a second time the value of the merchandize.

To remove these hardships, the merchants and bankers of the metropolis petitioned the legislature in 1823, and, in consequence, were passed the 4 Geo. IV. c. 83, and the 6 Geo. IV. c. 94, which contain important provisions for establishing the validity of contracts, made in relation to merchandize entrusted to factors, or agents. These acts came into full operation on the 1st October, 1826; but, by a subsequent act, 7 Geo. IV. c. 7, so far as they affected the Bank of England receiving pledges and deposits, they came into operation on the 22d of March previous.

Under the 6 Geo. IV. all persons entrusted for consignment or sale with goods, and who shall have shipped them in *their own names*, and any persons in whose names such goods shall be shipped by any other person, shall be deemed the OWNERS, so far as to entitle the con-

signee to a lien thereon, in respect of any money advanced to the person in whose name the goods shall be shipped, or in respect of any money or negotiable security received by him, to the use of such consignee, in like manner as if true owners thereof; *provided* the consignee had no notice at or before the advance of the money, by the bill of lading, or otherwise, to the contrary; the person, also, in whose name the goods are shipped is to be deemed the owner, unless the contrary be shown.

Persons entrusted with and in possession of any bill of lading, India-warrant, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, warrant or order for delivery of goods, shall be taken to be the owner of the goods mentioned in such documents, so as to give validity to any contract to be entered into by such person, for the sale thereof, or for the deposit, or pledge thereof, as security for any advance made upon the faith of such documents; *provided* the persons making the advance have no previous knowledge that the person so entrusted is *not* the actual and real owner of such goods or merchandize.

Persons may take, in deposit or pledge, any goods or merchandize so entrusted, as security for any debt or demand; but they do not thereby acquire a greater power over the deposit than the factor possessed at the time of making the deposit.

All contracts and payments made with agents so entrusted are binding on the principal, if they be made in the ordinary course of business, or out of that course, if within the agent's authority, and the parties had no notice that such agent is not authorized to sell the goods or receive the purchase-money.

Nothing in the act prevents the principal from recovering his goods from his factor before they have been sold, deposited, or pledged; or from the assignee of the factor, in the event of his bankruptcy, nor from recovering the purchase-money, in the event of the sale, or from recovering the goods, by re-paying any sum of money, or negotiable instrument, advanced upon them: *provided*, in case of the bankruptcy of the factor, the

principal shall be held to have discharged any debt due *by him* to the estate of the bankrupt.

By 7 & 8 Geo. IV. c. 29, if any factor, or agent, deposit or pledge any goods entrusted to him, or any of the above-mentioned documents, for his own benefit, and in violation of good faith, he is guilty of a misdemeanor, and liable to transportation for a term not exceeding fourteen years, or receive such other punishment as the court shall adjudge. But this criminal liability is not incurred where the factor, or agent, has not made the goods a security *beyond his own lien*, for money justly due from his principal, or for the amount of any bill of exchange drawn by, or on account of, the principal and accepted by the factor, or agent.

The liability for such unlawful deposit does not extend to partners or other persons, unless accessory.

## CHAP. XVI.

### *Authors, Publishers, and Printers.*

THE general diffusion of literature among all classes, and the great value of popular compositions, have given to literary productions an importance unknown to a former period. It may be proper, therefore, to recapitulate the laws relative to literary property, and the regulations by which author and publisher are secured in the enjoyment of the profits resulting from their labours and purchases.

Copyright is, by the common law, a perpetual and in-violable right, vested in the author of any literary composition. But the enjoyment of this right is limited by the statute of Queen Ann; and all remedy for the violation of it taken away after the expiration of the two periods specified in the act.

By the 8 Ann, c. 19, amended by the 15, 41, & 54, Geo. III. it is provided, that the term of copyright, in the author, and his assignee, by instrument, *IN WRITING*, shall extend to *twenty-eight* years, absolutely, and for the life of the author, if he survive that period; whoever violates it is liable to a special action on the case, with double costs, and forfeiture of the pirated edition to

### 134 AUTHORS, PUBLISHERS, AND PRINTERS.

the owners of the copyright; as well as to a penalty of 3*d.* per sheet, to be paid, one moiety to the king, and the other to any informer who shall sue for it.

Under the last act, too, the 54 Geo. III. c. 156, s. 5, it is expressly provided that the neglect to enter a work at Stationers' Hall shall not at all affect the copyright; but that neglect is punishable with a penalty of 5*l.* and eleven times the value of the book, to be recovered by a common informer.

Works of sculpture, engravings, musical compositions, maps, and charts, are within the protection of the statutes, provided the proprietor's name, with the date, be affixed before the first publication. But the representation, on the stage, of a dramatic performance, *not printed*, is not such a publication as the author can maintain an action for the violation of his copyright, *Colman v. Wat-then*, 5 T. R. 245. No one, however, has a right to take down a play in short-hand, and print it, without the permission of the author.

The manager of a theatre having publicly represented, for profit, a tragedy altered and abridged for the stage, without the consent of the owner of the copyright, is not liable to an action, although the tragedy had been *previously printed* and published for sale, *Murray v. Elliston*, 5 B. & A. 657.

The identity of a literary composition consists in the *sentiment* and *language*; the same conceptions, clothed in the same words, must, necessarily, be the same composition; and whatever method be taken of exhibiting that composition to the ear or eye of another, by recital, writing, or printing, it is always the identical work of the author which is so conveyed; and no one has a right so to use it, without his consent.

A *fair* and *bona-fide* abridgment of any book is considered a new work, and, however it may injure the sale of the original, yet it is not deemed a piracy, or violation of the author's copyright: and, in the case of *Kearsley v. Carey*, Lord Ellenborough held that variance in *form* and *manner* was a variance in substance; and any material alteration, which was an improvement, would not be considered a piracy.

But, in all abridgments, and, also, history, chronology, dictionaries, and the like, it must be left to a jury to determine whether the publication complained of is a *servile* copy and *imitation*, or an original work upon the same subject.

No one but the author, or his assignee, has a right to print or publish *original* notes, or *additions* to an old work, though the chief copyright may be open, and any person has liberty to publish the original work, without the notes or improvement, *Carey v. Longman*, 1 E. R. 358.

An author has a copyright in his *manuscript* before it is printed, 2 B. & A. 298.

Every assignment of copyright, to be valid, must be *in writing*; no assignment by parol is sufficient, not even of a song, *Power v. Walker*, 3 M. & S. 7.—See, also, *Rundell v. Murray*, 1 Jac. 311, Nov. 1821.

No statute existed in Ireland for the protection of copyright at the period of the Union; the English law was extended there by the 41 Geo. III. c. 107, which is the first statute for the protection of literary property in the United Kingdom.

#### INJUNCTION IN CHANCERY.

Upon the principal of preventing a civil injury, which a court of equity can only redress, the Court of Chancery interferes to protect the owners of copyright, by issuing an injunction to restrain the sale of pirated copies, and in order to produce an account of such copies printed and sold.

The principle on which the court interferes is the *protection of property*; it requires, therefore, a clear title in the party complaining, as the condition of its interference. It follows, from this, that the copyright must be properly vested in the prosecutor, and that the work must be of such a nature that damages might be recovered in a court of common law for pirating it; that is, it must be a work neither of an *immoral*, *blasphemous*, or *libellous* character.

No action can be maintained for pirating a work which professes to be the *amours of a courtesan*, and it is no answer to the objection that the defendant is also



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a wrong doer in publishing them, and that he, therefore, ought not to setup their immorality, *Stockdale v. Onwhyn*. 2 Car. & Pay. 163. An action cannot be maintained even for a bill for printing a grossly immoral and indecent work, as the "Memoirs of Harriet Wilson," *Poplett v. Stockdale*, 1 Ry. & M. 337.

In *Lawrence v. Smith*, an injunction to restrain the infringement of copyright in a work as to which it appeared doubtful whether it did not tend to impugn the doctrines of the Scriptures, was refused, *Jac.* 471.

In the case of *Abernethy v. Hutchinson*, an injunction was applied for to restrain the publication of the surgical lectures of the plaintiff; the application was refused, on the ground that the lecturer had no *written* copy of his lectures, prior to their delivery. The principle laid down in this case was, that, though any one may have a property in an oral discourse, or even his own thoughts, yet, to establish a right to such property, there must be a *visible* and tangible record, by writing, of its existence, otherwise it cannot be identified, and the owner's claim established.

If the right or infringement of copyright be disputed, in *fact*, the court will sometimes direct an issue to be tried at common law, and finally sustain or dissolve the injunction according to the result of that trial.

### PREROGATIVE COPYRIGHTS.

The copyright of certain works is exclusively vested in the crown, for different reasons. 1. The king, as the executive magistrate, has the right of promulging to the people all acts of state and government: this gives him the exclusive privilege of printing, at his own press, or that of his grantees, all acts of parliament, proclamations, and orders of council. 2. As head of the church, he has a right to the publication of all liturgies, and books of divine service. 3. He has a right, by purchase, to the copies of such law-books, grammars, and other compositions, as were compiled or translated at the expense of the crown. And, upon this last principle, the exclusive right of printing the translation of the *Bible* is founded. 4. And, lastly, almanacks have been said to

be prerogative copyrights, either as things derelict, or else as being, substantially, nothing more than the calendar prefixed to the liturgy.

## BOOKS AND PAMPHLETS.

The author of any pamphlet, by the statute of Ann, loses all property therein, if the stamp duty of three shillings per sheet be not paid; and the omission of the printer or publisher's name subjects to a penalty of 20*l*.

By the 54 Geo. III. c. 156, eleven printed copies of every book, upon paper on which the largest impression is printed, shall be delivered, *on demand*, within twelve months after publication, to the warehouse-keeper of the Stationers' Company, for the use of the British Museum, Sion-college, the Bodlean-library, at Oxford, the Public-library, at Cambridge, the Library of the Faculty of Advocates, at Edinburgh, the Libraries of the four Universities of Scotland, and Trinity-college-library, and King's-inns-library, Dublin. Penalty, forfeiture of the value of the books, and 5*l*. each copy. No copies of a second edition, without alteration or addition, can be demanded. And, it would seem from a recent decision, no public bodies have a right to demand copies of a work published in numbers, and that commenced and was in progress before the passing of the 53 Geo. III. *The British Museum v. Payne*, Jan. 11, 1827.

The 41 Geo. III. confirmed by the 54 Geo. III. imposes a penalty of 3*d*. per sheet, half to the king and half to the informer, on all persons who shall *import from abroad*, or reprint at home, without the consent of the proprietor, any work of which the term of the copyright is unexpired. Such contraband books are, also, forfeited to the proprietor, and the offender liable to an action for damages. But the penalty of 3*d*. per sheet is not recoverable, unless the book has been previously entered in the register-book of the Stationers' Company.

Persons importing, selling, or keeping for sale, any books *first* composed and printed in the United Kingdom, and re-printed elsewhere, are to forfeit the same, and also 10*l*. and double the value; which books may be seized by officers of the customs and excise; but this

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clause does not extend to books not printed in the United Kingdom within twenty years, or books reprinted abroad, and inserted in larger works.

If, however, an author print and publish abroad, and do not use due diligence to be the first printer and publisher here also, any third person, procuring the work from abroad, may lawfully print and publish it here, 2 *Bar & Cres.* 870.

### NEWSPAPERS.

By the 38 Geo. III. c. 78, no person shall print or publish any newspaper, until an affidavit has been delivered at the Stamp Office, stating the names and places of abode of the printer, publisher, and proprietor, specifying the amount of the shares, the title of the paper, and a description of the building in which such newspaper is intended to be printed. And a copy of every newspaper is to be delivered, within six days after publication, to the commissioners of stamps, under a penalty of 100*l.*

To prevent the dispersing of papers of an irreligious or seditious character, the 39 Geo. III. c. 79, requires that the name of every printer, type-founder, and maker of printing presses, shall be entered with the clerk of the peace, under a penalty of 20*l.* Also, every person selling types or presses must, if required by a justice of peace, give an account to whom they are sold.

By the same act, every printer is required to print, upon the front of every page, which is printed on one side only, and upon the first and last sheet of every publication, which contains more than one leaf, his name and place of abode. He is, also, required to keep a copy of every work he prints, on which shall be written, or printed, the name of the person by whom he is employed, and shall produce the same to any justice of peace, if required, within six months.

In *Bensley v. Bignold* it was decided a printer cannot recover for labour or materials used in printing any work, unless he affixes his name to it, pursuant to the act, 5 *B. & A.* 335.

Persons publishing papers without the name and abode

of the printer may be apprehended, and carried before a magistrate ; and a peace-officer, by warrant from a justice of peace, may enter any place, to search for printing-presses or types, suspected to be kept without the notice required by the act, and may carry them away, together with all printed papers found in the place.

Some further restraints were imposed, in the year 1820, on the sale and printing of cheap periodical publications, of a political character, by subjecting them to the duty on newspapers. By the 1 Geo. IV. c. 9, every periodical pamphlet and paper, published at intervals, not exceeding twenty-six days, containing public news, intelligence, or occurrences, or any remarks thereon, and not containing *more* than two sheets, or published for *less* price than 6*d.* shall be deemed *newspapers*, and subject to the same regulations and stamp duties.

## CHAP. XVII.

### *Patentees.*

A RIGHT of *patent*, or the exclusive privilege of making and disposing of a new invention, for the period of *fourteen* years, is secured by the 21 Jac. c. 3, and, most probably, it was this statute which suggested to the legislature the first law for the limitation of copyright.

The grant is obtained on petition and affidavit to the crown, setting forth that the petitioner has, after great labour and expense, made a certain discovery, which he describes, and which, he believes, will be of great public utility, and that he is the first inventor. The petition is referred to the attorney or solicitor general, who is attended by the applicant and all competitors separately. They explain their projects to him, and he decides on granting or withholding a patent; and where two proposed inventions coincide, rejects both applications. This important discretion is not subject to any appeal or to any responsibility, except the common remedies against public officers by impeachment,

indictment, or action, neither of which could succeed, unless a *corrupt motive* was established. After approval by the attorney or solicitor general, the grant is made out, sealed, and enrolled.

The expense of obtaining a patent is very considerable; the following are the charges for a patent for England *only*, exclusive of the stamp duty on the specification which is charged according to its length:—

Attorney General's Office, fees.....	£12	19	0
Privy Seal Office .....	4	2	0
Secretary of State's Office .....	17	9	6
Patent Office, Adelphi .....	48	17	2
Signet Office .....	4	7	0
Stamps.....	13	18	0

*Parl. Papers, vol. 21, Sess 1826.*                      £101 12 8

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If the patent extend to Ireland, Scotland, and the Colonies, the charges are proportionally higher, amounting to half as much more.

The two main conditions of a legal patent are, *first*, that the thing in favour of which it is granted must be a new, useful, and original invention; *secondly*, the patentee must furnish so clear a specification of it that the public may be able to have the benefit of it as fully and as cheaply as the patentee himself at the end of the fourteen years, during which he is rewarded for his ingenuity by having the sole making of it. A failure in any of these points renders the grant of a patent void. Hence, if the description, plan, or model of any new invention be so obscure as not to be intelligible at least to those in the same trade or manufacture, the patent is illegal, and cannot be maintained. The specifications, under the hand and seal of the patentees, are preserved in an office for public inspection.

A few of the legal points decided will at once show the law on this subject.

A patent for a machine, each part of which was in use before, but in which the *combination* of the different parts is new, and a *new result* obtained, is good. But,

if the inventor produce a machine (as a ship's anchor) by the union of *two* parts instead of *three*, which was the former practice, and the method employed to unite the two parts was in use before, in making pickaxes, but had never been applied in the same manner, a patent for the same is void, 4 B. & A. 550. In this last case although the *combination* is *new*, the method by which it is effected is not, nor is any *new result* obtained; therefore, the discovery is not such as can be protected by an exclusive privilege.

A patent may be granted for an *addition* to an old invention, *Hornblower v. Boulton*, 8 T. R. 95.

A patent cannot be granted for a philosophical *principle* ONLY, neither organized, nor capable of being so: but a patent for a machine *improved* by a philosophical principle, though the machine existed before, is good, 8 T. R. 95; 2 H. B. 463.

A patent is void if granted for an article which has been publicly vended by the patentee, though only for four months before. So, too, if the patentee say that by one process he can produce three things, and fail in any one of them. Also, if the specification direct the same thing to be produced several different ways, or by several different ingredients, and any *one* of them fail, 1. T. R. 602. Lastly, a patent is void, if it be for *several* distinct inventions, and any *one* of them fail of originality.

An injunction may be obtained for the infringement of a patent, in the same way as for the violation of literary property.

## CHAP. XVIII.

### *Landlords, Tenants, and Lodgers.*

**LANDLORD** is he of whom land or tenements are taken.

*Tenant* signifies one that holds or possesses land or tenements by any kind of right, either in fee for life, for years, or at will.

A *lodger* is one who occupies a room, hired in the house of another.

*Tenure* is the terms or conditions, according to which lands, tenements, or lodgings, are holden.

The law between householders and lodgers is, in all respects, the same as between landlords and tenants; all, therefore, that will be subsequently stated, relative to fixtures, notice, and payment of rent, applies equally to both descriptions of tenure.

#### LEASES.

A *lease* is, properly, a conveyance, on consideration of rent, or other annual recompense, for a specified period, of certain rights, or interest, held in a possession by the *lessor* (the person granting the lease) to the *lessee*, or person to whom the lease is made.

All persons may grant leases for any term *less* than their own respective interests. To grant leases for the *whole term* would be, more properly, an assignment than a lease.

Leases made to aliens are void, except the lease of a house or shop to an alien merchant.

A lease may bear date as far back as the parties please, but not on a day *subsequent* to its execution. It must be *in writing* if for longer than three years, and must be read by or to the parties, if required; it must be signed and sealed by them, or their agents properly authorized, and must be delivered, either by the lessor or his attorney, in the presence of one or two witnesses. It takes effect from the day of delivery, not from the date, *Steele v. Mant*, 4 B. & C. 272.

A lease generally contains various *covenants*, or mutual stipulations by the landlord and tenant; on the part of the landlord usually only one direct covenant, namely, for the quiet enjoyment of his premises; on the part of the tenant, the covenants in ordinary leases are to pay rent and taxes, to repair; against carrying on *offensive* trades, and to insure; with a proviso for re-entry in case of non-performance of any of these stipulations.

A lease may be *assigned* over for the *whole* or *part* of the term; the last, however, is properly only an *under-lease*: the difference between the two is that, in an assignment, the assignee is bound to observe the covenants

in the original lease ; but an *under-lessee* is tenant to the lessor only, and has nothing to do with the terms of the original lease further than his possession may be affected by the observance of them by the lessor. But it seems, from *Adams v. Maberly*, that a tenant at will, occupying property of a person holding it by lease, is bound by the lease and its covenants to whatever conditions it contains. *Maidstone Assizes, August, 1827.*

Lastly, leases may be *forfeited*, 1. By alienation, or when the tenant grants to another a greater estate in the premises than he has himself. 2. If the lessee commit felony, or any act that, in a court of record, amounts to a forfeiture of his estate. 3. By waste, as pulling down houses, suffering buildings to decay for want of necessary repairs, tearing up floors or doors, or destroying the timber, rabbits in a warren, fish, &c. 4. By non-payment of rent.

In all these cases of forfeiture, the landlord has a power of re-entry, and that, in many instances, as we shall hereafter explain, by a very summary procedure.

#### FIXTURES, REPAIRS, AND RENT.

Whatever is fixed to the soil, or out-house, or fold-yard-wall, so as to become a part thereof, cannot be removed, and will, at the expiration of the lease, belong to the lessor ; but a tenant may remove what he has placed for the convenience of his *trade*, as engines, counters, brewing vessels, &c. provided he does it during the continuance of his term, and has not expressly covenanted to the contrary. Erections for the purpose of farming and agriculture do not come under the exceptions with respect to *trade*, and cannot be taken down again. Wainscot, doors, floors, and other things fixed with *nails*, cannot be removed ; but chimney-pieces, pier-glasses, and wainscot, put up with screws, may be removed.

The tenant is bound to continue the payment of his rent, though his premises may be destroyed by fire, and the landlord refuse to rebuild them. But a tenant is not to repair damages by tempest, lightning, or other



natural casualty; unless there is a special agreement to that effect between him and the landlord. If a tenant covenant to repair generally, without any express exception, and the premises are burnt down, he is bound to rebuild them, 6 *T. R.* 650.

When a lessor covenants to repair, and neglects to do so, the lessee may repair, and deduct the expense out of the rent.

On payment of the rent, the tenant may deduct the ground-rent, the land-tax, and taxes imposed subsequently to the making of his lease. If, however, the tenant covenant to pay *all* taxes, he must pay the land-tax. In the absence of *express* agreement, the tenant may pay it, and deduct it out of the first payment of rent, by tendering the receipts.

Rent is demandable and payable any time between sun-rise and sun-set.

The demand must be made by the landlord, or some person specially appointed by him.

If a landlord in the *middle* of a quarter accept the key of a house, and take possession, he cannot afterwards recover from the tenant for use and occupation, 5 *Taunt.* 518.

#### NOTICE TO QUIT.

Notice, or warning, is necessary where no *certain* time is fixed as the duration of the tenant's term; for, when the tenant holds for a *certain* term, no notice is requisite, but he quits on the expiration of his lease. 1 *T. R.* 54.

When the holding is from year to year, half a year's notice to quit must be given, reckoning from feast-day to feast-day; so that for a tenant to quit at Midsummer, notice must be given on the preceding Christmas.

In London, a tenant for *less* rent than 40*s* must have a quarter's warning; *above* that sum, half a year.

When the tenancy is for a less period than a year, the notice depends on the letting; thus, if taken by the quarter, a quarter's warning; if monthly, a month's warning; and weekly, a week's warning.

Weekly rent is payable weekly, but if the parties let

it run to a quarter, and is then paid as a *quarter's rent*, it seems the tenure will become a quarterly tenure.

There is no distinction between houses and lands as to the period of notice to quit, 1 *T. R.* 162.

Notice by word of mouth is sufficient, if it can be proved to have been given, and was explicit as to the time of quitting, and absolute and explicit in its requisition to quit.

A parol notice on a parol lease will suffice.

When a house or apartments are taken for a *definite* period, as a week or month, no notice is necessary, it being understood the parties are to quit at the expiration of that time.

Notice to quit should be served on the party himself for whom it is intended, or else left with his wife or servant, at his usual place of abode.

Non-compliance with a notice, subjects the tenant to an action of ejectment, or to the payment of double rent.

But notice to quit may be waived, or tacitly withdrawn, by any act or conduct implying a permission on the part of the landlord, and an acquiescence on the part of the tenant, that the tenure shall continue as before. Thus, the receipt of rent for the premises up to a period subsequent to the expiration of the notice will be deemed a waiver, unless it appear to have been accepted merely as a satisfaction for the tenant's subsequent occupation of the premises.

The following is the usual form of notice from a landlord to a tenant:—

Sir,—I hereby give you notice to quit, on or before Christmas next, [*or any other period or day of the month, according to the tenure,*] the house and garden [*or apartment, as the case may be*] you hold of me, at the rent of 10*l.* per annum. Dated the 21st day of May, 1827.

Yours, &c.

To Mr. George Scott,  
Sydney-street.

CHARLES FLOWER,  
Landlord of the said House  
and Garden or Apartment.

The form of notice from a tenant to a landlord is precisely in the same style and import.

## RECOVERY OF RENT.

For the non-payment of rent on the day it is due, the law has furnished landlords with several methods of recovering it; the chief of which are, 1. By action at law. 2. By ejectment. 3. By distress on the premises. The last is most commonly resorted to, and that of which we shall speak.

A DISTRESS is of the nature of a pledge, and consists in taking some moveable of the wrong doer into the custody of the party injured, till satisfaction be obtained. In general, all chattels found on the premises, whether the property of a tenant or a stranger, may be distrained. But dogs, rabbits, poultry, fish, or things of a wild nature; things on the premises in the way of trade, as horses in a smith's shop, corn at a mill or cloth and garments at a tailor's shop; the cattle and goods of a temporary guest at an inn (but not carriages or horses at livery); the tools and implements of a man's trade, *in actual use*; the books of a scholar, or the axe of a carpenter; wearing apparel, when upon the back; a beast at the plough, or the horse a man is riding upon; also loose money: none of these can be taken by distress. Goods in the hands of a carrier, or of a principal in the hands of a factor are privileged from distress; as also those consigned to a wharfinger for sale.

To these heads of things not distrainable may be added all goods in the custody of the law, whether as being already distrained or taken in execution. But, in the last case, so long as they remain on the premises, the landlord has a beneficial lien on them.

Nothing can be distrained which cannot be returned in as good a state as when taken; as milk, fruit, and the like.

Distresses must be proportioned to the thing distrained for. If a man take unreasonable distress, as two oxen for twelvecence, he may be heavily fined.

Distress must be had in the *day time*, and not till the day *after* the rent is due. If made after the tender of arrears, it will be illegal, and though the tender be made after the distress, but before it is impounded, the landlord must deliver up the distress.

By 11 Geo. II. c. 19, goods *fraudulently conveyed off* the premises to avoid a distress for arrears of rent may be seized any where within thirty days after, unless bonâ fide sold to those not privy to the fraud. Every person assisting in such removal or concealment forfeits double the value of the goods, to be recovered by action of debt. If the value of the goods be under 50*l.* two justices, on application from the landlord, and proof of the fraudulent conveyance, may order the parties to pay double the value of the goods, or, on default, be committed to hard labour for six months.

By the 7th section, landlords, with the assistance of a constable, may break open a dwelling house, oath being first made before a justice of reasonable ground to suspect that goods are concealed there.

It is material to observe that the remedies under this statute for goods clandestinely or fraudently conveyed away to avoid distress, extend only to the tenant's *own goods*, and not to those of a *stranger*, 5 M. & S. 38. It is even considered a creditor, with the consent of his debtor, may take possession of the goods of the latter for a bonâ fide debt, and remove them from the premises, if apprehensive of a distress, without being liable to the penalties of the act.

The place where the distress is deposited in security, or, as it is termed, *impounded*, may be on such part of the premises as is most convenient. But, if the goods distrained are removed, notice must be given of the place where, and such notice contain an inventory of the goods distrained.

#### REPLEVY AND SALE.

A replevy is an action to try the legality of the distress, and meanwhile recover back the goods distrained; as it is a remedy which may involve the tenant in an expensive and protracted law-suit, it ought to be very cautiously attempted.

If a person is determined to replevy, he must, within five days after the notice given him of the distress, go with two housekeepers to the sheriff's office, or to a person authorized by the sheriff to grant replevies, and

enter into a bond, with two sureties, in double the value of the goods, to try, without delay, the right of distraining, and to return the distress in case the right should be determined against him; upon which the sheriff shall direct a precept to one of his bailiffs to restore the goods to the tenant.

On the *sixth* day after the distress, if the goods are not replevied, nor further time allowed by the landlord at the *request of the tenant*, the goods must be appraised by two sworn appraisers, and sold for the best price that can be got for them; and, after deducting the costs of the distress, appraisement, and sale, leave the surplus, if any, to the owner.

If a sufficient amount is not raised by the first distress, a second distress may issue.

To prevent extortion in distresses for small rents, it is enacted, by 57 Geo. III. c. 93, that no broker, in levying a distress under 20*l.* shall take more than the following sums, under the penalty of treble the amount of the moneys so unlawfully taken:—

	s.	d.
For levying the distress .....	3	0
Man in possession, per day .....	2	6
Appraisement, whether by one broker or more, in the pound .....	0	6

Stamps the lawful amount thereof. All expenses of advertisement, if any such, 10*s.* Catalogues, sale, commission, and delivery of goods, one shilling in the pound on the net produce of the sale. And the broker is required to give a copy of his charges to the person distrained upon. The provisions of this act for regulating the costs of distresses are extended, by 7 & 8 Geo. IV. c. 17, to any distress for land-tax, assessed taxes, poor-rates, church-rates, highway and sewer rates, or any other rates, assessment, or impositions whatever, where the sum demanded is under 20*l.*

By the New Bankrupt Act, no distress for rent, after an act of bankruptcy, can be made for more than a *year's rent*, but the landlord may prove under the commission for the residue; and the same rule applies in insolvency after assignment to the assignees.

By the 7 Ann, c. 12, the goods of ambassadors and their domestics are protected from distress; but this privilege does not extend to articles of luxury.

The law has provided other SUMMARY METHODS for recovering possession of land and tenements under different circumstances.

By 11 Geo. II. amended by 57 Geo. III. c. 52, where a tenant at rack rent, or at full three-fourths of the yearly value, *deserts* his premises, being half a year's rent in arrear, without leaving sufficient distress, two justices may, after fourteen days' notice, publicly affixed on the premises, put the landlord in possession, and the lease, if any, is afterwards void. See, also, the 1 Geo. IV. c. 87.

The possession of *parish tenements*, when unlawfully held, is recovered under the 59 Geo. III. c. 12, s. 24.

It seems that a tenant who holds over after the expiration of his tenancy cannot maintain an action of trespass against his landlord, who *forcibly* enters; but if the force employed amount to a *breach of the peace*, the landlord is criminally liable, 1 *Price* 53.

## GENERAL REMARKS.

The law allows a landlord to enter a house to view repairs, but if he enter forcibly he is a trespasser.

Rent tendered in a lump is a valid tender, it being the receiver's business to count it out and see that it is right.

No goods taken in execution can be removed till the landlord's rent is paid, provided it be *demand*ed, and amount to no more than a *year's rent*.

In taking a house, it is proper a person should carefully examine the covenants in the lease, and those in the underlease, if any, or he may possibly discover, when too late, that he is tied down by such restrictions as to render the house unfit for his purpose, or likely to involve him in unforeseen difficulties. He should take care that all arrears of rent, the ground-rent, and all taxes, are paid up to the time he takes possession; for, if they are not, he must pay all arrears, and can only recover them by having recourse to the last tenant.

In purchasing a lease of a tenant, care should be taken, by examining the lease and inventory, what fix-

tures, &c. belong to the landlord, and what to the tenant.

A practice, which it is necessary to guard against, has become prevalent to insert words in leases sufficiently comprehensive to include *trade fixtures*, and such as the law itself, without the lease, would consider the tenant's.

A person taking a lease ought to obtain a copy of it before it is engrossed on stamps, and carefully consider the terms it embraces.

Equal caution is needful in taking unfurnished lodgings, for, if the rent of the house be in arrear, either then, or at a subsequent period, the furniture of the lodger will be liable. When the furniture of a lodger has been thus seized, his only remedy is an action against his landlord.

Every lodger, too, should examine the condition of the apartments he takes, with the number of panes of glass cracked or broken, or other things defaced or damaged; for, on quitting the lodging, the landlord may demand satisfaction for what was destroyed before his entrance.

Lastly, as it is not the policy of the law to encourage immorality, a landlord cannot recover for board and lodging furnished to a woman of the town, if he is aware at the time that such is her mode of life, *Appleton v. Campbell*, 1 Carr. & Pay. 347. T. T. 1826.

## CHAP. XIX.

### *Innkeepers.*

INNS were instituted for the lodging and relief of travellers; and at common law any man might erect and keep an inn or ale-house for that purpose, but now they are licensed, and give security to refrain from adulterating their liquors, and for keeping good order in their houses.

If an innkeeper harbour thieves, or persons of scandalous reputation, or suffer frequent disorder in his house, or take exorbitant prices, or set up a new inn in a place where there is no need of one, to the injury of other ancient or well-governed inns, he may be indicted and fined.

A guest at an inn removing goods out of his chamber with a view of carrying them off, is guilty of felony. So it is felony in a guest fraudulently taking away a piece of plate set before him.

It has been before remarked (p. 18) that an innkeeper cannot recover for provisions furnished at the request of a candidate to voters at a parliamentary election.

## OBLIGATIONS OF INNKEEPERS.

Innkeepers are bound by law to receive guests who come to their inns, and are, also, bound to protect the property of those guests. They have no option either to receive or reject guests, and as they cannot refuse to receive guests, so neither can they impose unreasonable terms on them.

If an innkeeper refuse to entertain a guest on tendering him a reasonable price, not only may his house be suppressed, but damages obtained by action, and he may be indicted and fined at the suit of the king.

It is said that he may be compelled, by the constable of the town or justice of the peace, to receive and entertain such person as a guest; and this, whether he has a sign before his door or not, if he make it his general business to entertain travellers, 1 *Hawk.* c. 78. He may, also, be compelled to receive a horse, though the owner does not lodge in the house; but it has been ruled, that an innkeeper is not bound to furnish travellers with post-horses, though he has a license, and has horses at liberty in his stable.

An innkeeper is accountable for all the goods placed within his house, whether delivered expressly into his keeping or not; it is sufficient, if they be at the inn, to charge him.

If a guest be robbed, he is bound to restitution, unless it appear the guest was robbed by his own servant or companion; and it is no plea for the innkeeper, that, at the time the theft was committed, he was sick or insane.

But an innkeeper is bound to answer only for those things which are *within* his house. If, therefore, he refuse, because his house is full, to receive a person, who thereupon says he will shift, and then is robbed, the innkeeper is not liable. Nor is an innkeeper, in any



case, liable for goods, unless the owner be a *guest* at the inn.

A man, by putting up a horse, though he never enter the inn himself, becomes thereby a guest.

If one contract for lodging for a set time, and do not eat or drink there, he is no guest, but a lodger, and so not under the innkeeper's protection; but if he eat, drink, or pay for his diet, it is otherwise.

So, an attorney hiring a chamber for a whole term, the host is not chargeable with any robbery in it, because the attorney is a sort of lessee.

In London, an hotel, meaning by that term, a tavern, or coffee-house, where beds and provisions are furnished to all who pay for them, is under the same liabilities as an inn, *Thompson v. Lacey*, 3 B. & A. 283.

#### DETENTION FOR RECKONING.

An innkeeper may detain the person of his guest, who eats, or the horse which eats, till payment.

But a horse committed to an innkeeper may be detained only for his own meat, and not for the meat of his guest, or of any other horse.

If an innkeeper refuse to give in the reckoning, in writing, or otherwise, specifying the number of quarts or pints, or sells in other than standard measure, he cannot, on default of payment of such reckoning, detain any goods or things belonging to the person from whom such reckoning is due; but he is left to a remedy by action.

So, if he give credit to a person, and let him go without payment, he cannot afterwards detain him for the same reckoning.

An innkeeper may detain, for his keep, a horse left with him to be kept, though the person who left him had no right to him, and though such person did not stay in the inn.

A horse taken away before the reckoning is discharged may be pursued and brought back.

An innkeeper has no right, by general custom, to use a horse detained for his meat, nor to sell him. But, by the special custom of London and Exeter, he may take a horse, who has eaten out its price, to his own use, on the appraisement of four neighbours.

## BILLETING OF SOLDIERS.

By the Mutiny Act, 7 & 8 Geo. IV. c. 4, all keepers of inns, livery-stables, ale-houses, victualling-houses, wine-sellers by retail, and dram-sellers, are obliged to receive all officers and soldiers quartered, or billeted, upon them. But persons having more billeted, in proportion, than their neighbours, may be relieved, by complaint to a justice of peace.

Persons holding canteens, distillers, shopkeepers whose principal dealing is not in spirits, keepers of taverns only being free of the Vintners' Company in London, are exempt from receiving the military.

Innkeepers refusing to accommodate the military, as provided by the act, may be fined, not above 5*l.* nor less than 40*s.*

Officers quartering the wives, children, or servants of any of the military, without consent of the owner, may be fined 20*s.*

Where any horse or dragoon is quartered on a person having no stable, he may be relieved on complaint to a magistrate, and the payment of a composition.

The act regulating the subsistence of soldiers, the 7 & 8 Geo. IV. c. 14, provides that persons on whom the military are quartered, may furnish one meal per day, consisting of not exceeding one pound and a quarter of meat, previous to being dressed, one pound of bread, one pound of vegetables, two pints of small beer, vinegar and salt, for which they shall charge 1*s.*

The allowance for hay and straw per day, for one horse quartered, is 10*d.*

Innkeepers giving soldiers, on march, money in lieu of diet and small beer, may be proceeded against and fined.

Officers and men may find their own diet and small beer, if the innkeeper prefer finding, *gratis*, candles, vinegar, and salt, and will allow them the use of fire, and the necessary utensils to dress their victuals.

Every officer, on receiving the pay, or subsistence-money, must give notice to the persons on whom the military are quartered, so that their claims may be liquidated.

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Every officer, on receiving the pay, or subsistence-money, must give notice to the persons on whom the military are quartered, so that their claims may be liquidated.

In Westminster, the constables are to deliver lists, on oath, to the quarter sessions, of houses liable to receive soldiers.

Justices holding any military office are not allowed to be concerned in the billeting of soldiers.

For the regulations of the Licensing Act, which is continued by 7 & 8 Geo. IV. c. 48, to the end of the next session of parliament, see *Alohouse*, in the DICTIONARY.

## CHAP. XX.

### *Carriers.*

ALL persons carrying goods for hire, as masters and owners of ships, lightermen, proprietors of waggons, stage-coachmen, and the like, come under the denomination of common carriers, and are bound to receive and carry goods for a reasonable hire; to take due care of them in their passage, to deliver them in the same condition they were received, or, in default thereof, to make compensation, unless the loss arise from unavoidable natural occurrences, as lightning or tempests, or from the default of the parties sending them.

Hackney coachmen in London are not so bound, except there be an express agreement, and money paid for the carriage of the goods.

*Special carriers*, who professedly do not carry for all persons indiscriminately, are not, like common carriers, bound to undertake the carriage of goods. Where, however, a person *undertakes* to carry goods safely and securely, he is responsible, though he is not a common carrier, nor receives a premium for the carriage.

The master of a stage-coach, who only carries *passengers for hire*, is not liable for goods. But if he carry *goods as well as passengers* for hire, then he is a common carrier, and liable.

If a carrier, entrusted with goods, open the pack and take away part of the goods, he is guilty of felony. It is the same if the carrier receive goods to carry to a certain place, and carry them to some other place than that appointed, with intent to defraud the owner.

If a common carrier, who has convenience, is offered his hire, and refuse to carry goods, he is liable to an

action, in the same manner as an innkeeper, who refuses to entertain his guest, or a smith, who refuses to shoe a horse. The liability arises not from the reward, but the *public* employment that is undertaken.

But a carrier may refuse to admit goods into his warehouse at an *unseasonable* time, or before he is ready to take his journey.

If a carrier be robbed of the goods, he is liable; for, having his hire, there is an implied undertaking for the safe custody and delivery of the goods. But the carrier, under certain circumstances, may bring his action against the hundred to make good his loss.—See *Hue and Cry*, in the **DICTIONARY**.

The action against a carrier for the non-delivery or loss of goods must be brought by the person in whom the *legal right* of property in the goods is vested at the time; for he is the person who has sustained the loss by the negligence of the carrier. So, where a tradesman orders goods to be sent by a carrier, the moment the goods are delivered it operates as a delivery to the purchaser, and the whole property, from that time, vests in the purchaser, who can alone bring an action for loss or damage.

But if there is a special agreement by the parties, that the consignor was to pay for the carriage of the goods, the action is maintainable by the consignor.

## CAUTIONS.

In order to charge carriers, these circumstances must be observed.

1. The goods must be lost while in possession of the carrier himself, or his agents, 5 T. R. 389.

2. The carrier is liable only so far as he is *paid*. So, if a bag of money be entered, as containing only 200*l*. the carrier is only liable to that amount, though the bag contain 400*l*. or a greater sum.

When a carrier, by *public notice*, limits his responsibility as to money, plate, jewels, or other valuable articles, unless entered as such, and paid for accordingly, he is not liable to make them good, when entered only as common parcels. But, to avail himself of this defence, he must show that his notice was so prominent

and conspicuous that it is impossible the public should be ignorant of it; in fact, the law requires proof of *actual* notice to the consignor of the article. Thus, where the notice is in the office, and the goods are sent for and taken up at the individual's house, or notice is in offices at each end of the whole journey, but the goods are taken up at some intermediate stage, unless knowledge of the terms can be brought home to the consignor of the goods, the carrier takes them upon his general responsibility. The word "*glass*" written on the package is a sufficient information of the nature and value of the goods, where an intimation is necessary, from their value being greater than their bulk and appearance indicate.

A carrier is liable for *gross negligence*, though the goods are above the value mentioned in his public notice, and though they are not specially entered and insured, *Birkett v. Willan*, 2 B. & A. 356.

3. A delivery to the carrier's servant is a delivery to himself, and shall charge him; but they must be goods such as it is his custom to carry.

On legal principles, it can make no difference whether the carriage is by land or water, but the legislature has limited the liability of water-carriage by sea. By the 7 Geo. II. and the 26 Geo. III. c. 86, ship-owners are not liable for any fraud or robbery by the master or mariners, nor for any loss by fire, beyond the value of the vessel, and the freight of the voyage.

A carrier has a lien on the goods in his possession for *his hire*, but no further.

In no case can a common carrier charge more than is reasonable for his trouble, 3 *Taunt.* 264; but he may charge extra for the greater risk attending the carriage of valuable goods.

The statutes 3 W. & M. c. 12, and 21 Geo. II. c. 28, which empowered justices of peace in Easter quarter sessions to fix the rate of all land-carriage throughout England, is repealed by an act of the last session, the 7 & 8 Geo. IV. c. 39. The rates for the carriage of parcels, and the mode of delivering them in London, will be found under the head of *Porterage*, in the **DICTIONARY**.

## CHAP. XXI.

*Proprietors of Stage-Coaches, Drivers, and Guards.*

By the 3 Geo. IV. c. 95, a stage-coach is described to be any carriage or vehicle let out for the purpose of carrying passengers for hire, and travelling at the rate of three or four miles per hour, without regard to the number of wheels, number of horses, or of passengers, or whether the same be a close or open carriage, provided each passenger is charged a separate and distinct fare.

## NUMBER OF PASSENGERS.

By 50 Geo. III. c. 48, any stage-coach drawn by four horses is allowed to carry ten outside passengers, exclusive of the coachman, but including the guard; namely, one passenger on the box, three passengers on the front of the roof, and the remaining six behind; no passenger to be set on the luggage, or that part of the roof allotted for it. Stage-coaches drawn by two or three horses, allowed five outside passengers, exclusive of the coachman. And all *long* or *double-bodied coaches* shall be permitted to carry eight outside passengers, exclusive of the coachman, but including the guard.

No child in the lap, or under seven years of age, shall be accounted one of such number, unless there be more than one, in that case two shall be counted equal to one grown person.

No person paying as an outside passenger shall be permitted to sit as an inside passenger, unless with the consent of one of the inside passengers, next to whom such outside passenger shall be placed.

Where the construction of the coach is such as to be peculiarly wide, and being licensed for the purpose, four outside passengers instead of three shall be allowed to sit in front, so that the number of outsides shall not exceed ten in all.

By the 21st section, stage-coaches carrying *no luggage on the top*, and having obtained a special license for the



purpose, and having the name of the owner and the number of inside and outside passengers inscribed on the coach, are permitted to carry *two additional* outside passengers.

By 7 Geo. IV. c. 3, s. 11, persons licensed to use any carriage or vehicle, for conveying passengers *for hire* at separate fares, having four wheels and drawn by ONE horse or mule only, are not allowed to carry more than *six passengers*; or having two wheels and drawn by ONE horse or mule, to carry not more than *four passengers*. Penalty, 20*l*.

#### LUGGAGE.

Not to carry luggage exceeding two feet in height on the roof of any coach drawn by four horses; if drawn by two or three, then not to exceed eighteen inches above the roof, on penalty of 10*l*. for every inch above the space allowed; in default of payment, to be committed to gaol for two months: the division on the top for luggage to be railed off, or otherwise separated from the other part. Refusing to allow any passenger, justice, or constable, to measure the luggage, subjects the offender to a penalty of 50*s*.

To encourage the lowering of the height of coaches, it is allowed to carry luggage of a *greater* height than two feet, provided such luggage be not a greater height from the ground, including the height of such coach, than ten feet nine inches.

Stage-coach licenses shall specify the number of inside and outside passengers to be carried, which number (mail-coaches excepted) shall be inscribed in conspicuous characters on the outside of the coach, together with the names of the proprietors.

#### PENALTIES ON GUARDS AND DRIVERS.

The driver of any coach, mail-coach, or other carriage, stopping at any place, shall not quit his horses or the box till a proper person be employed to hold the horses, and such person shall hold the same till the driver has returned to his box, or till the post-boy who rides one of the fore-horses, is again mounted, and has,

## **PENALTIES ON GUARDS AND DRIVERS. 159**

in his hands, the reins : penalty, for neglecting so to do, not less than 10*s.* nor more than 5*l.* This does not extend to hackney-coaches, drawn by two horses only.

If the coachman permit any other person, without the consent of a proprietor, or against the consent of a passenger, to drive, or shall quit the box without reasonable occasion, although the reins be left in the hands of a passenger on the box, such coachman shall forfeit any sum not exceeding 10*l.*

Drivers or guards of mail-coaches loitering on the road, or not travelling at the speed fixed by the postmaster-general, unless prevented by the badness of the roads, or other unavoidable circumstance, or not duly accounting to their employers for all moneys received by them, shall forfeit not less than 5*l.* nor more than 10*l.* ; in case of non-payment, to be committed to gaol for not less than three, nor more than six months.

Drivers or guards using abusive or insulting language, or insisting on more than the sum to which they are entitled, shall forfeit not less than 5*s.* nor more than 10*s.* or be committed to gaol for one or three months.

Passengers may require toll-collectors to count the number of passengers, or measure the height of the luggage ; the driver refusing to stop for this purpose forfeits 5*l.* If any person, endeavouring to evade such examination, shall descend from the coach previous to its reaching the toll-bar, and re-ascending after it is past, he shall forfeit 10*l.*

By the same act, 50 Geo. III. amended by the 3 Geo. IV. c. 95, if the guard or driver of any stage-coach, or any other person employed about the same, shall, by intoxication, or wanton and furious driving, or any other wilful misconduct, injure or endanger any person in their life, limbs, or property, every such offender shall, on conviction, upon the oath of one or more credible witnesses, before any justice or magistrate, forfeit not less than 5*l.* nor more than 10*l.* for each offence ; in default of payment, be committed to the house of correction for not less than three, nor more than six months.

By the 12th section of the 3 Geo. IV. penalties against proprietors may be recovered against any of them, who

reside in or nearest to the place where the offence has been committed.

By 7 Geo. IV. c. 3, s. 17, persons standing or plying for hire at separate fares, with any carriage or vehicle, without a licensing plate, are subject to a penalty of 20*l.*; and the carriage and horses may be seized by a constable or other person, and lodged at some public greenyard, or place of safe custody, till one or more magistrates have adjudged the penalty.

Stage-coaches taking up passengers within the paved streets of the metropolis are subject to the regulations of hackney-coaches, under 1 Geo. I. c. 53.

The liabilities of stage-coachmen in the carriage of parcels may be collected from the last chapter, on CARRIERS.

## CHAP. XXII.

### *Pawnbrokers.*

PAWN is a pledge or security for a loan of money, and which becomes forfeited unless it be redeemed by the repayment of the money advanced, with interest, within a period fixed by law.

A pawn cannot be taken in an execution against a pawnbroker; nor can it be *used* without the consent, express or implied, of the owner, *Lit. Rep.* 332.

A pawnbroker refusing to deliver up goods pledged on tender of the money may be *indicted*; because, being secretly pledged, it may be impossible to prove a deposit for want of witnesses, if an action of *trover* be only brought for them, 3 *Salk.* 268.

Beside the common law liabilities of pawnbrokers, they are also regulated by several acts of parliament; namely, 1 Jac. I. c. 21, the 25 Geo. III. c. 48, the 39 & 40 Geo. III. c. 48 & c. 99, and the 44 Geo. III. c. 98.

By these acts, pawnbrokers trading in gold or silver plate are to take out an excise license and pay a duty of 5*l.* 15*s.* per annum; also, if within the bills of mortality or twopenny post, or within the cities of London or Westminster, an annual license-duty of 15*l.*; elsewhere, 7*l.* 10*s.* Penalty for not renewing license ten days before the end of the year, 50*l.*

Every pawnbroker must cause his name, and the word "*Pawnbroker*," to be put up, in large legible characters, above the door of his shop, on pain of forfeiting 10*l.* per week.

The *rate of interest* on pledges and other matters relative to pawnbrokers, are now chiefly regulated by 39 & 40 Geo. III. c. 99, by which the following rates are allowed.

For every pledge not exceeding 2*s.* 6*d.* *one halfpenny* for any term not exceeding one calendar month it shall remain in pawn, and the same for every month afterwards, including the current month in which such pledge is redeemed, though such month is not expired.

<i>s.</i>	<i>d.</i>		<i>d.</i>
If 5	0	shall have been lent	1
7	6	.....	1½
10	0	.....	2
12	6	.....	2½
15	0	.....	3
17	6	.....	3½
20	0	.....	4

So on in proportion for any sum not exceeding 40*s.* If exceeding 40*s.* and not exceeding 42*s.* *eight pence*; if exceeding 42*s.* and not exceeding 10*l.* after the rate of *three pence* for every 20*s.* by the calendar month, and so in proportion for every fractional sum.

For any intermediate pledge between 2*s.* 6*d.* and 40*s.* the pawnbroker may take after the rate of 4*d.* for the loan of 20*s.* per month.

Where the fraction of the sum to be paid is a *farthing*, the pawnbroker is bound to give a farthing in change for a halfpenny.

Parties may redeem within seven days after the end of the *first* month without paying anything for the extra seven days, or within fourteen days on paying for one month and a half; but parties redeeming *after* the expiration of the fourteen days must pay the *second* month; and the like regulations are observable in every subsequent month when the parties apply to redeem.

Pawns shall be entered in a book, with a description of the goods, the money lent, the date, name, and abode

of the person pawning; and a duplicate of this entry, with the name and abode of the pawnbroker, shall be given *on a note* to the pawner.

The duplicate is given *gratis* if the sum lent is *under 5s.* but if the money is *above 5s.* and under *10s.* the pawnbroker may take a halfpenny; for *10s.* and under *20s.* one penny; *20s.* and under *5l.* two pence; *5l.* or more, four-pence. Upon the production of the duplicate, the pawnbroker delivers up the goods pawned.

Every pawnbroker must exhibit in his shop, in large legible characters, the rate of profit, charges on duplicates, &c.

Persons pawning goods, without the authority of the owner, shall forfeit not less than *20s.* nor more than *5l.* with the full value of the goods; and, on default of payment, may be committed to the house of correction to hard labour for three months and whipped.

Persons *forging* or *counterfeiting* duplicates, or not giving an account of themselves on offering to pawn or redeem goods, may be seized, and carried before a justice; who, on conviction, may send the offenders to the house of correction for any period not exceeding three months.

Persons buying, or taking in pledge, *unfinished goods*, or linen, or apparel, entrusted to others to wash or mend, shall forfeit double the sum lent, and restore the goods. Peace officers, under a warrant, may search for such goods, and, if found, restore them to the owner.

Persons producing the duplicates shall be deemed the owners; and, where duplicates or memorandums are lost, the pawnbroker shall deliver a copy, with the form of an affidavit, receiving for the same, where the goods pawned do not exceed *5s.* a *halfpenny*; exceeding *5s.* and not *10s.* *one penny*; if above *10s.* according to the rates payable for the original duplicate; the affidavit being sworn before a justice of peace, the goods may be redeemed.

All pawned goods are forfeited and may be sold at the end of ONE YEAR. Where the sum lent is above *10s.* and not exceeding *10l.* they must be sold by public auction, notice of such sale being twice given, at least two

days before the auction, in a public newspaper; but a notice *in writing* in the presence of a witness from the owner of the goods *not to sell*, three months farther shall be allowed beyond the year of redemption.

Pictures, books, statues, philosophical instruments, china, &c. can only be sold four times in the year: namely on the first Monday, and following days, in January, April, July, and October, in each year.

An account of the sale of pledges, above 10s. must be kept, and the overplus paid to the owner, if demanded, within *three years* after the sale. Penalty 10*l.* and treble the sum lent.

Pawnbrokers cannot purchase any goods, in pledge, except at auction. They cannot take gowns from persons appearing under twelve years of age, or intoxicated with liquor; they cannot buy or take in pawn the notes of other pawnbrokers; nor buy any goods before eight in the forenoon, or after eight in the evening; nor receive pawns before eight in the forenoon, nor after eight in the evening, between Michaelmas and Lady-day, or before seven in the morning and after nine in the evening, the remainder of the year.

All forfeitures and penalties may be recovered before any justice, so that prosecutions be commenced within *twelve months*.

No fee or gratuity shall be taken for any summons or warrant relating to goods pawned.

Churchwardens and overseers, nominated by a justice, are obliged to prosecute, and any inhabitant may be a witness.

The acts for the regulation of Pawnbrokers do not extend to persons lending money at 5*l.* per cent. without further profit.

## CHAP. XXIII.

### *Auctioneers.*

EVERY auctioneer, on receiving a license, must give sureties for the payment of the auction-duties; if in London, himself in 1000*l.* and two sureties in 200*l.* each; and if in the country, himself in 500*l.* and two sureties in 50*l.* each.

An auctioneer who has duly paid the license-duty is not liable, in the city of London, to the penalties for acting as a *broker*, without being admitted agreeably to 6 Ann, c. 16.

A licensed auctioneer going from town to town in a public stage-coach, and sending goods by public wag-gons, and selling them on commission, by retail or by auction, is a *trading person*, within the 50 Geo. III. c. 41, s. 6, and must take out a hawker's and pedlar's license; so, likewise, a person travelling in this manner, and having packages of books, &c. sent after him by public conveyance, taking rooms at each town, and there selling such books, &c. by retail or by auction, is a trading person, within the seventh section of the same act.

Auctioneers must be well skilled in their duties; and if their employers sustain any damage through them, an action will lie. They must make amends if they sell the property for less, or in a way contrary to the instructions of their employer.

If an auctioneer pay over the produce of a sale to his employer, after receiving notice that the goods were not the property of such employer, the real owner of the goods may recover the amount from the auctioneer.

Auctioneers cannot become the purchasers of property entrusted to them to sell, at a less value than its real worth, unless they can prove that the owner was acquainted with its real value.

A warranty by an auctioneer, pursuant to instructions, as to the soundness or title of the article offered, will not bind him, except made on his *own* responsibility; but, to relieve him, he must disclose the name of his employer at the time of sale.

If an estate, or other property, be bought in by the owner, and proper notice was not previously given to the auctioneer of his intention to bid, the duty must be paid, however fair the transaction.

If an auctioneer neglect to take proper precautions to prevent the duty attaching, he will be liable to pay the duty himself, *Capp v. Topham*, 6 E. R. 392.

If the owner put the price under a candlestick in the room, which is called a *dumb bidding*, and it is agreed

that no bidding shall avail, if not equal to that, it was held to be an actual bidding of so much to supersede smaller biddings at the auction.

If the owner of goods, or an estate, put up to sale, by auction, employ puffers to bid for him, without declaring it, and there is only *one* real bidder, who, by means of the puffer, is induced to purchase at a high price, such purchaser shall not be compelled to complete the contract, *Howard v. Castle*, 6 T. R. 642.

When the owner of an estate intends only to put up the estate at a certain price, and not to bid for it, in case of an advance, no previous notice of his intention need be given.

If the vendor's title prove bad, the auction-duty will be remitted on application to the commissioners of excise, or to two justices of the peace.

Tithes are a *tenement*, within the exemption of 19 Geo. III. c. 56, and, as such, not liable to the auction-duty, under 43 Geo. III. c. 69, *Rex v. Ellis*, 3 Price, 323.

Although the auctioneer is made liable to the payment of the auction-duties, he may recover the same from the vendor; and, by a condition of the sale, the payment of the whole or a part of the duty may be imposed on the buyer, who, refusing or neglecting to pay it, the bidding is void.

If an auctioneer sell an estate without sufficient authority, so that the purchaser cannot obtain the benefit of his bargain, the auctioneer will be compelled to pay all the costs and loss the buyer may have incurred.

If an auctioneer give credit to a vendee, or take a bill, or other security, for the purchase-money, it is at his own risk, and the vendor can compel him to pay the money.

Unless an auctioneer disclose the name of his principal, an action will lie against him for damages for breach of the contract.

Goods sold remain at the risk of the seller, while any thing remains to be done by him to ascertain the price; but afterward the property is changed by the sale, and,



whether injured or destroyed by fire, or otherwise, it will be at the risk of the buyer.

If a vendor cannot make a good title, and the purchaser's money has been lying idle, the vendor must pay interest to the purchaser, *Babington, on Auctions*, c. 5, s. 1.

A clause is usually inserted in the conditions of sale of forfeiture of the deposit, re-sale, and compensation for loss on re-sale; but there is no doubt that, if this condition were omitted, the vendor would be entitled to retain the deposit, and recover any damage beyond it, in case the contract was avoided by the sole default of the purchaser.

A bidder at an auction may retract his bidding any time before the hammer is down, unless this is precluded by the conditions of sale.

## CHAP. XXIV.

### *Farmers and Graziers.*

PERSONS using violence to hinder the buying or carrying of corn, may be imprisoned three months, within which time they are to be publicly whipped.

It is against the common law to sell corn in the sheaf before it is threshed, because, by such sale, the market is forestalled.

By 13 Geo. III. c. 81, no ram shall be kept on the common fields between the 25th of August and the 25th of September. Any person turning out on any forest, wood, moor, or other unenclosed ground, any sheep or lamb infected with the mange, to forfeit not more than 10*l.* nor less than 20*s.* 38 Geo. III. c. 65.

## BUTTER AND CHEESE.

By the 36 Geo. III. c. 86, warehouse-keepers, ship-pers, or others, refusing to receive any ship butter, to forfeit 10*s.* for every firkin of butter, and 50*s.* for every wey of cheese.

Vessels for the packing of butter are to be made of well-seasoned timber, of a certain weight, with the same end and abode of the cooper, and the weight or tar

of the vessel branded on the outside of the bottom, in permanent and legible characters. Penalty for neglect, 10s.

Dairymen are to pack their butter in no other vessels, and before packing, they shall soak and season them, branding in the inside on the bottom, and on the outside at the top, and also on the bouge on the staves, their christian and surnames. Penalty 5l.

The quantities packed to be good and merchantable, and, exclusive of the cask, eighty-four pounds net weight of butter in each tub; fifty-six pounds in firkins, and twenty-eight pounds in half-firkins; and such butter shall not be mixed or salted with great salt, on pain of 5l. for each offence.

Persons guilty of fraud by altering, after packing, the weight, quality, or marks, to forfeit 30l.

Persons counterfeiting the names or marks of farmers, to forfeit 30l.

Persons repacking butter in any vessel for sale again to forfeit 5l.; but foreign butter may be repacked in vessels used for British butter, defacing the original marks, and branding in their own names, and the words "*Foreign butter.*"

Penalties not exceeding 5l. are recoverable before one justice: if exceeding 5l. in courts of record, with costs: the whole to the informer.

This act does not extend to Scotland, nor to vessels that do not contain more than fourteen pounds of butter.

## CHAP. XXV.

### *Working Classes.*

THE laws affecting the interests of this important division of society may be comprised under the following heads:—

- I. *Combination Laws.*
- II. *Seduction of Artificers and Exportation of Machinery.*
- III. *Arbitration of Disputes between Masters and Workmen.*
- IV. *Treatment of Children in Cotton-mills.*
- V. *Friendly Societies.*
- VI. *Saving Banks.*

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- IV. *Treatment of Children in Cotton-mills.*
- V. *Friendly Societies.*
- VI. *Saving Banks.*

The sessions of parliament for 1824 and 1825 formed an important period in legislation, with respect to the working classes; all the old statutes, amounting to upwards of thirty, relative to combinations of workmen, were wholly or partially repealed. By the 6 Geo. IV. c. 129, all the statutes commencing with the 33 Edw. I. down to the 5 Geo. IV. are repealed, so far as they refer to combinations for regulating the hours of labour, for fixing the rate of wages, or obliging workmen not hired to enter into work, and for controlling the mode of carrying on any manufacture or business.

But, for the protection of workmen, it is provided that if any person, by *violence, threats, molesting, or obstruction*, endeavour to force any workman to leave his employer, or to prevent him being employed; or to induce him to belong to any club, or contribute to any fund, or to alter the mode of carrying on any manufacture, or to limit the number of apprentices; every person so offending, or aiding and assisting therein, shall be imprisoned only, or be imprisoned and kept to hard labour for any time not exceeding three calendar months.

Workmen are not punishable for meeting to consult and determine the rate of wages, or the hours of labour, or for entering into agreements, verbal or written, among themselves, to fix the rate of wages, or the hours they shall work.

The same protection is extended to employers who shall meet for similar objects.

Offenders may be called upon equally with others to give evidence in behalf of any prosecution under this act, and are indemnified against subsequent informations against themselves.

Justices may summon and convict offenders on the oath of one or more credible witnesses.

Witnesses summoned to appear, refusing to attend, may be apprehended by warrant, and imprisoned for three calendar months, or till they submit to be examined and give evidence.

No justice of the peace, being also a master in the

particular trade or manufacture in or concerning which any offence is charged to have been committed under the act, can act as justice under the act.

## II. SEDUCTION OF ARTIFICERS.

By the 5 Geo. I. the 23 Geo. II. and the 22 & 23 Geo. III. severe penalties, with imprisonment, are inflicted on persons who seduce artificers, engaged in the cotton, linen, woollen, or other manufacture, to settle in foreign parts. These enactments were framed with a view to prevent the communication of our inventions and discoveries to other nations. But the legislature having discovered the futility or injurious tendency of these precautions, the above statutes were repealed by 5 Geo. IV. c. 97, so far as they refer to the seduction and emigration of artizans. Also, so much of the act of 39 Geo. III. as relates to the seducing of colliers and others from Scotland.

No change, however, has yet taken place in the law for preventing the exportation of the *implements* and *machinery* employed in manufactures.

By the 21 Geo. III. c. 3, if any person put on board any ship, not bound to any place in Great Britain or Ireland, or shall have in his custody, with intent to export, any engine, tool, or implement, used in the cotton, woollen, linen, or silk manufacture, he forfeits the sum of 200*l.* with imprisonment for twelve calendar months, and till the forfeiture be paid. And every captain and custom-house officer who shall, knowingly, receive the same, or take an entry of it, forfeits 200*l.*

Several other statutes impose penalties on the export of implements employed in printing calicoes, muslins, and linens; and on tools employed in the iron or steel manufactures.

## III. ARBITRATION OF DISPUTES.

The 5 Geo. IV. c. 96, repeals former statutes for the arbitration of disputes between master and workman, and substitutes new regulations for settling all disputes which may arise respecting wages, the hours of labour,

the finishing of work, the finding of implements, and the compensation to be given for any new or altered manufacture. But nothing in this act empowers the justices to establish a *rate of wages*, or price of labour, unless with the mutual consent of master and workman.

When differences arise on any of the above subjects, the parties may mutually agree to submit their case to the determination of a magistrate or justice of peace. If they cannot agree to such a reference, the justice is empowered, on complaint of one of the parties, to nominate not less than four, nor more than six persons, half master manufacturers, agents, or foremen, and half workmen; out of the number so nominated, the master chooses one arbitrator, and the workman chooses another, who have full power to hear, and finally to determine, the question in dispute.

If one of the arbitrators refuse to act, the justice may appoint another, the expense being defrayed by the party whose referee refused to act; in case the second arbitrator chosen shall not attend at the time and place appointed, the other arbitrator may proceed by *himself*, and determine the dispute, the award of such sole arbitrator being conclusive, and not subject to review, appeal, or suspension.

Arbitrators may examine, upon oath, the parties and witnesses; but their determination must be made within two days after their nomination.

Justices may commit persons to prison who refuse to attend and give evidence, on summons by the arbitrators.

In case the arbitrators cannot agree, the justice is appointed *umpire*, who is to make his decision with all possible despatch, and in no case to exceed two days from the expiration of the time allowed to the arbitrators to make and sign their award.

No justice, being a master manufacturer, can preside as justice under this act.

Any other mode, different from the form prescribed by this act, to which the parties may agree, for the set-

tlement of their differences, is equally binding, and the same process of enforcing the award by distress, sale, and imprisonment, is allowed.

Either master or workman may appoint in writing any person to act for him.

When any married woman, or infant under twenty-one years of age, has cause of complaint, in any of the cases provided by this act, the proceedings may be carried on by the husband, or by the parents or kindred of the child.

Work not objected to within twenty-four hours after delivery cannot afterwards be complained of.

Money directed to be paid by any award not paid within two days, it may be levied by distress and sale of goods and chattels; and, in case no sufficient distress can be had, the party may be imprisoned for any time not exceeding three months.

When the levying of a distress may be attended with ruinous consequences to a family, the justices have the option of committing the party to prison in lieu of such distress.

Tables of fees, to be levied under the act, to be hung up in every place where general, quarter, or other sessions of the peace are held.

Complaint by any workman of bad materials must be made within three weeks after receiving them, and all other complaints must be made within six days after the cause of such complaints shall have arisen.

#### IV. COTTON-MILLS.

The 6 Geo. IV. c. 63, comprises important provisions for the *preservation of the health*, and regulating the hours of work, of children employed in cotton-mills and factories.

By this act, no person under sixteen years of age can be employed in any cotton-mill longer than twelve hours a day, exclusive of the necessary time for meals; such twelve hours to be between the hours of five in the morning and eight in the evening.

Nor on a Saturday can such persons be worked more



than nine hours, to be completed between the hours of five in the morning and half past four in the afternoon.

To every such person must be allowed one half-hour for breakfast and one hour for dinner.

If, by accident to the building or machinery, any time be lost, it may be made up by working *one hour* additional, on any of the six days except Saturday. If time be lost by an excess or deficiency of water, it may be worked up at the rate of *one half-hour* per day.

The ceilings and interior of the walls must be washed with quick lime and water once a-year.

In a conspicuous part of the mill, a copy of the act, or full and true abstract of its regulations, must be hung up, and signed by the proprietors or overseers.

Every proprietor or foreman knowingly acting contrary to the provisions of this act, or the acts of the 42 & 59 of Geo. III. forfeits not exceeding 20*l.* nor less than 10*l.*; one half to the informer and the other half to the poor.

Proprietors of mills are exempted from the penalties of employing children under the age of sixteen, provided they keep a book, in which the names of such children are entered, and in which the parents or guardians testify that they are of or above the age of nine years.

No justice of the peace, being also a proprietor or master of any cotton-mill, or the son of any such proprietor or master, shall act as justice under this act.

#### V. FRIENDLY SOCIETIES.

Friendly societies are associations of individuals who, by the payment of small sums of money, at stated periods, provide a fund for their support and assistance in sickness and old age; and, for the better securing the ends of such salutary institutions, the legislature has passed several acts for their protection and government.

By the 59 Geo. III. c. 128, the members of friendly societies, hereafter instituted, are not entitled to the advantages thereof, unless framed according to the provisions of this act.

Persons desirous of forming friendly societies must submit the rules of such intended institution, and the table of payment and allowance to be adopted therein, for the approval of the justices at the general quarter sessions. Justices cannot confirm tables of allowance and payment unless such tables have been previously approved by at least two professional actuaries, or other persons versed in the calculation of life-annuities.

Justices may frame general rules for the district in which they act, and according to which future friendly societies must be established.

Proposals to the justices for the formation of a friendly society must set forth the names, residence, and occupation of *three* persons at the least, of whom two shall be substantial householders, assessed to the relief of the poor upon a sum not less than 50*l.*; which persons shall be trustees of the intended society, and whose signatures must be obtained.

New rules or alterations must be submitted to the approbation of the justices at quarter sessions.

The choice of a treasurer is vested in the trustees, who obtain such securities as they deem necessary. No stamp-duty is chargeable on any bond or instrument connected with the society.

All money, goods, chattels, securities, and obligatory instruments, are vested in the trustees for the benefit of the institution, and all proceedings at law must be in their name.

No society instituted under this act can be dissolved, nor can there be any division of the funds, otherwise than according to the rules confirmed as aforesaid, without the consent of the trustees, or major part of them; provided that no such consent of trustees shall be given, unless it has been ascertained that the interest of members and all persons having claim thereon, in possession or expectancy, are, by the proposed division, fairly dealt with and secured.

Funds of friendly institutions may be deposited in saving banks, or in the Bank of England.

The more important clauses in former acts not repealed by the 59 Geo. III. are the following:—

By 33 Geo. III. c. 54, the members, or any committee of them for that purpose, may impose fines and forfeitures for the due regulation of the society.

No confirmed rule or regulation can be altered or repealed, unless at a general meeting of the members, convened by public notice in writing; and such alteration or repeal is not binding unless made with the approbation of *three-fourths* of the members, or committee chosen for that purpose.

Acts of the committees, duly appointed by the society, have the same force as if done at a general meeting.

Treasurers, or the trustees, with the consent of the society, may invest the surplus funds of the institution either on private securities or in the public funds.

Treasurers are to render accounts, and to pay over the balances remaining in their hands; in default of which, the society may exhibit a petition in chancery, without the payment of fees or stamp-duties.

Officers becoming bankrupt or insolvent, their creditors or assigns shall, within forty days after demand, deliver up all moneys, securities, or papers, appertaining to the society, and shall pay out of the assets all money remaining due before any other debts.

No society can dissolve itself, nor can there be any division of stock without the consent of FIVE-SIXTHS of the members, subject, also, to the precautions before-mentioned in the 59 Geo. III.

Rules and orders are to be entered in a book, signed by the members, who may, at all reasonable times, inspect the same; and are to be received as evidence in all courts.

By 49 Geo. III. c. 125, all societies established before Michaelmas, 1796, whose rules have been submitted to the sessions, or which may hereafter be submitted and approved of, are deemed within the benefit of the 33 Geo. III. c. 54.

Two justices, on complaint, may enforce the observance of the rules of friendly societies, and, in case of the adjudication of moneys in arrear, levy the same by distress and sale of the goods of the person on whom the order is made.

On complaint of members of relief *refused*, justices may summon the proper officer, and, upon proof on oath, may order the money to be paid, with costs, not exceeding 10s. and, if not paid, it may be levied by distress on the effects of the society. But the power of the magistrates under this clause is limited to the subject of complaint; and they cannot compel a society to *continue a member* who has been expelled for disobedience to its rules, *Rex v. Soper, Hil. Term, 1825.*

## VI. SAVING BANKS.

These institutions are established under the authority of parliament for the deposit of small sums of money, to accumulate by compound interest, and which the depositors may at any time withdraw from the bank, without charge or deduction, beyond the necessary expenses attending the management.

By the 57 Geo. III. c. 130, the rules of saving banks are to be open to the inspection of the depositors, and a transcript of the rules on parchment is to be deposited with the clerk of the peace; such rules and regulations thenceforth become binding on the parties.

No treasurer, master, or manager, is to derive any advantage whatever from the deposits; and such institution is not entitled to the benefit of the act unless it be provided in the rules that persons depositing money shall receive the *whole* benefit of their deposits without deduction, except for such expenses as unavoidably attend the management.

The funds are not to be placed out upon any personal security; but any sum, not less than 50*l.* is to be paid into the Bank of England, to the account of the Commissioners for the Reduction of the National Debt, who issue debentures in favour of the saving bank, bearing interest at three pence per cent. per diem.

All rules and regulations of friendly societies imposing penalties on depositors in saving-banks are void and of no effect.

Depositors dying, their representatives are not entitled to receive any sum, exceeding 20*l.* without exhibiting the probate of the will of the deceased, or letters of ad-

ministration of the estate or effects. But no *stamp* or *legacy-duty* is chargeable on the probate, or letters of administration to the effects of a deceased depositor, provided they do not exceed 50*l*.

Depositors dying intestate, and no one administering to their effects within six months, the trustees may, provided the deposits of the deceased are less than 20*l*. pay the same, agreeably to the regulations of the institution; or, if there be no regulations for that purpose, they may dispose of the effects of the deceased depositor as directed by the Statute of Distributions.

Bonds and other legal instruments are exempt from *stamp-duty*.

The 5 Geo. IV. c. 62, contains some important additions to former acts: it provides that the trustees shall **not** dispose of any increased stock among the depositors till after the expiration of TEN YEARS from the establishment of the institution: nor shall any such disposition be made till at least one moiety of the increased stock has been set apart to provide for any future loss or contingency.

By the same act, no deposit can be made after the 20th Nov. 1824, by ticket, number, or otherwise, without disclosing to the trustees the name of the depositor.

Nor, after the 20th Nov. 1824, can any sum be deposited during the year next ensuing *exceeding in the whole* 50*l*.; nor in the year following, namely, from Nov. 1825, exceeding 30*l*.; and no depositor can have in any saving bank *at one time* a sum exceeding 200*l*. exclusive of interest.

Any trustee may receive money on account of individuals, which may be entered in his name and that of the depositor.

Charitable institutions or societies are not allowed to subscribe the whole or any part of their funds into the fund of any saving bank.

Persons are not allowed to subscribe into more than one saving bank *at one time*, and depositors are required to sign a declaration to the effect that they have no money in any other saving bank; if such declaration prove false, the deposits are forfeited. But no person

is restrained from removing the whole of his deposit from one saving bank to another, and, on receiving a certificate from the trustees, is entitled to all the privileges of an original subscriber.

Lastly, the interest due to each depositor must be computed half-yearly, to the 20th of May and the 20th of Nov. ; or yearly, to the 20th of Nov. in each year, or nearest to such period as interest shall be payable.

For other laws affecting the working classes, see pp. 120-2.

## CHAP. XXVI.

### *Hawkers and Pedlars.*

A HAWKER is properly an itinerant trader, who carries his wares through the street, or from town to town. A *pedlar* is a hawker, who deals in trifling or inferior commodities. Either from a regard to the revenue-laws, or from a desire to encourage the more open and settled pursuits of the local trader, the legislature has shown considerable jealousy of hawkers and pedlars, and placed their avocations under a system of penal regulation and surveillance.

By the 50 Geo. III. c. 41, hawkers and pedlars are to pay an annual license-duty of 4*l.* ; and if they travel with a horse, ass, or other beast, bearing or drawing burthen, they are subject to an additional duty of 4*l.* for each beast so employed. The granting of licenses and management of the duties are under the control of the commissioners of hackney-coaches.

Hawkers and pedlars, unless householders or residents in the place, are not allowed to sell by auction, whereby the highest bidder is deemed the purchaser: penalty 50*l.*: one half to the informer, the other half to the king. But nothing in the act extends to hinder any person from selling, or exposing to sale, any sort of goods in any public market or fair.

Every hawker, before he is licensed, must produce a certificate of good character and reputation, signed by the clergyman and two reputable inhabitants of the place where he usually resides.

Every hawker must have inscribed, in roman capitals, on the most conspicuous part of every pack, box, trunk, case, cart, or other vehicle in which he shall carry his wares, and on every room and shop in which he shall trade, and, likewise, on every hand-bill which he shall distribute, the words "LICENSED HAWKER." Penalty, in default, 10*l*. Unlicensed persons wrongfully using this designation, forfeit 10*l*.

Hawkers dealing in smuggled goods, or in goods fraudulently or dishonestly procured, are punishable by forfeiture of license, and incapacity to obtain one in future.

Hawkers trading without license are liable to a penalty of 10*l*. So, also, if they refuse to show their license, on the demand of any person to whom they offer goods for sale, or on the demand of any justice, mayor, constable, or other peace-officer, or any officer of the customs or excise. By 5 Geo. IV. c. 83, hawkers trading without a license are punishable as vagrants.

To forge or counterfeit a hawker's license incurs a penalty of 300*l*. To lend or hire a hawker's license, subjects lender and borrower to a penalty of 40*l*. each, and the license becomes forfeited. But the servant of a licensed hawker may travel with the license of his master.

Hawkers trading without a license are liable to be seized and detained by any person, who may give notice to a constable, in order to their being carried before a justice of peace. Constables refusing to assist in the execution of the act are liable to a penalty of 10*l*.

Nothing in the act extends to prohibit persons from selling fish, fruit, or victuals; nor to hinder the maker of any home manufacture from exposing his goods to sale, in any market, or fair, and in every city, borough, town corporate, and market-town; nor any tinker, cooper, glazier, plumber, harness-mender, or other person, from going about, and carrying the materials necessary to their business.

By the 52 Geo. III. c. 100, 'no person being a trader in any goods, wares, or manufactures of Great Britain, and selling the same by *wholesale*, shall be deemed a

hawker; and all such persons, or their agents, selling by *wholesale* only, shall go from house to house, to any of their customers who sell again by wholesale or retail, without being subject to any of the penalties contained in any act touching hawkers, pedlars, and petty chapmen.

No person committed under these acts for non-payment of penalties can be detained in custody for a longer period than three months.

Hawkers exposing their goods to sale in a market-town must do it in the market-place, 4 T. R. 273.

Persons hawking tea without a license are liable to a penalty, under 50 Geo. III.; and, even *with a license*, they would be liable to a penalty for selling tea in an unentered place, 2 B & C. 142.

## CHAP. XXVII.

### *Vagrants.*

By the 5 Geo. IV. c. 83, all the provisions previously enacted relative to idle and disorderly persons, rogues, vagabonds, incorrigible rogues, and other vagrants, are repealed, except only as to offences committed before the passing of the act. The new act is extremely comprehensive in its provisions, and the following is a digest of its contents.

#### I. *Who is deemed an IDLE AND DISORDERLY PERSON.*

Every person being able, wholly or partly, to maintain himself or family, by work or other means, and neglecting so to do, whereby they become chargeable to the parish; every person returning to and becoming chargeable to any parish, from whence he shall have been legally removed, unless he produce a certificate from the churchwarden and overseer, acknowledging him to be settled there; every petty hawker or pedlar wandering abroad and trading without being duly licensed; every common prostitute wandering in the public streets, or public highways, or in any place of public resort, and behaving in a riotous or indecent manner; and, lastly,



every person wandering abroad, or placing himself in any public place, court, or passage, to beg, or causing any child so to do : all these are deemed *idle and disorderly persons*, within the meaning of the act ; and a justice of the peace may commit the offender, by his own view, or the confession of the offender, or by the evidence of one credible witness, to the house of correction, to be kept to hard labour, for any time not exceeding one calendar month.

## II. *Who shall be deemed a ROGUE AND VAGABOND.*

Every person committing any of the offences mentioned in the last clause a *second* time ; every person pretending to palmistry or to tell fortunes ; every person lodging in any outhouse or in the open air, not having any visible means of subsistence, and not giving a good account of himself ; every person exposing to view, in any street or public place, any *obscene print, picture, or other* indecent exhibition ; every person wilfully and obscenely *exposing his person* in any street or public place, or in view thereof, with intent to insult any female ; every person endeavouring, by the exposure of wounds and deformities, to obtain alms ; every person going about to collect alms or charitable contributions under a fraudulent pretence ; every person running away and leaving his wife or children chargeable to the parish ; every person *playing or betting* in any street or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance ; every person having in his custody any picklock, or other implement, with *intent* feloniously to break house or building, or being armed with any gun or offensive weapon, with *intent* to commit any felonious act ; every person found in or upon any house or building, or in any enclosed yard, garden, or area, for any *unlawful* purpose ; every *suspected* person, or *reputed* thief frequenting any river, or navigable stream, dock, basin, wharf, quay, warehouse, or any street or way adjacent, with *intent* to commit felony ; and, lastly, every person apprehended as idle and disorderly, and violently resisting such apprehension, and being subsequently convicted of being idle and disorderly : all these are ROGUES AND VAGABONDS, and a

justice of peace may commit such offenders to the house of correction for any time not exceeding *three calendar months*.

III. *Who is deemed an INCORRIGIBLE ROGUE.*

Every person escaping out of confinement before the expiration of the time for which he has been committed under this act; every person committing any offence which shall subject him a *second* time to be convicted as a rogue and vagabond; and, lastly, every person apprehended as a rogue and vagabond, violently resisting such apprehension, and being subsequently convicted of being a rogue and vagabond: all these are deemed INCORRIGIBLE ROGUES; and any justice of peace may commit such offenders, being convicted before him, by the evidence of one or more credible witnesses, to the house of correction, to be kept to hard labour till the next general or quarter sessions of the peace.

The 6th section provides that any person may apprehend offenders under this act, and convey them before a justice, or deliver them into the custody of a constable.

*Incorrigible rogues*, at the next general or quarter sessions, may be further imprisoned for any period not exceeding one year, and, not being a female, whipped.

Constables, or other peace officers, neglecting to do their duty under this act, or persons hindering them from doing their duty, forfeit *5l.*

All vagrants are to be searched, and their trunks, bundles, &c. inspected; and, on information, on oath, a justice may issue a warrant to search any lodging-house or place suspected of harbouring vagrants.

Nothing in the act to be construed to restrain any visiting justice of any prison from granting a certificate, enabling any person discharged from such prison to receive alms or relief on their rout to their place of settlement.

The act does not extend to Scotland nor Ireland.

## CHAP. XXVIII.

### *Army and Navy.*

#### ARMY.

THE crown, with regard to military offences, has almost an absolute legislative power; for the king, by the annual Mutiny Act, may form articles of war and constitute courts martial, with power to try any crime by such articles, and inflict penalties by sentence or judgment of the same, not extending to *life or limb*, excepting for crimes expressly declared to be so punishable by the act.

By the present Mutiny Act, 7 & 8 Geo. IV. c. 4, it is provided that the number of forces shall be 87,359, and every officer or private man who shall excite or join any mutiny, or, knowing of it, shall not give notice to the commanding-officer, or shall desert, or list in any other regiment, or sleep upon his post, or leave it before he is relieved, or hold correspondence with a rebel or enemy, or strike or use violence to his superior officer, or shall disobey his lawful commands; the offender shall suffer such punishment as a court-martial shall inflict, though it extend to death itself.

In the case of desertion, the court which tries the offender may sentence to transportation, if death seem too severe a punishment under the circumstances; and, in all cases, the king may commute the sentence of death for that of transportation.

Deserters, who have enlisted for a *limited term*, may be sentenced to serve for life, and may be also adjudged to forfeit any increase of pay or pension to which otherwise they would be entitled. A mark is to be affixed on the body of deserters.

Soldiers guilty of any capital offence are to be delivered over to the civil power.

General courts martial have power to inflict corporal punishment for immoralities, misbehaviour, or neglect of duty, and may sentence to imprisonment in any house of correction, ss. 24, 25.

Persons receiving enlisting money from an officer or soldier, attested and on the recruiting service, is declared

duly enlisted; but, on application to a magistrate within four days after, and the payment of 20s. with expenses, he may be again discharged. Persons enlisting and wilfully concealing any infirmity, are punishable as incorrigible rogues, ss. 92, 100.

By 7 & 8 Geo. IV. c. 5, the MARINE FORCES, while on land, are subject to similar discipline and regulation as the military.

A soldier is invested with all the rights of other citizens, and is bound to all the duties of other citizens, and he is as much bound to prevent a breach of the peace or a felony as other citizens, *Burdett v. Abbott*.

By the 37 Geo. III. made perpetual by the 57 Geo. III. c. 7, to attempt to seduce any person serving in the army or navy from his allegiance, or to incite any one to commit any act of mutiny, is punishable with death. And whoever shall administer any unlawful oath, or shall take any *oath or engagement* intended to bind them in any mutinous or seditious society, or to obey any committee, or any person not having legal authority, shall be guilty of felony, and may be transported seven years.

Soldiers may make *verbal* wills, and dispose of their wages and personal chattels without the forms and expenses which the law requires in other cases.

Neither the full nor future half pay of a military or naval officer is assignable, *Lidderdale v. Duke of Montrose*, 4 T. R. 248. But, in case of insolvency, a portion of such pay may be sequestrated under the order of the court, with the consent of the secretary at war, or of the lords of the admiralty, 7 Geo. IV. c. 57, s. 29.

With respect to the MILITIA, while placed on general military duty, there is scarcely any distinction in their liability from troops of the line; but, while they are merely called out for annual training, they are subject to no punishment which affects life or limb. By the 55 Geo. III. the period during which, in ordinary times, they may be placed on duty is limited to twenty-eight days annually, and, by the 57 Geo. III. c. 57, his majesty may suspend their being embodied at all during any year. They are only sworn to serve in Great Britain and Ireland, and their service in the latter country is limited to two successive years.

## NAVY.

The system of government and discipline established in the navy is directed by certain express rules and articles, enacted by the authority of parliament; in these articles almost every possible offence is enumerated, and the punishment annexed, by which means seamen have an advantage over soldiers, whose articles are framed, from time to time, at the pleasure of the crown.

The acts of parliament referred to are the 22 Geo. II. c. 33, and the 19 Geo. III. c. 17, which, among other articles, comprise the following:—

Officers shall cause the sabbath-day to be duly observed, according to the liturgy of the Church of England.

Persons guilty of swearing, drunkenness, or uncleanness, are punishable as a court-martial shall direct.

Holding intelligence with an enemy, or receiving any letter or message from an enemy, and not within twelve hours communicating the same to the superior officer, is punishable with death. Nor shall any relieve an enemy with money, victuals, or ammunition, on pain of punishment.

No person on board a prize shall be stripped of his clothes, pillaged, beaten, or ill-treated, upon pain of such punishment as a court-martial shall impose.

Every commander who, upon signal to fight, or in sight of any ship which it may be his duty to engage, or who, upon likelihood of engagement, shall not make the necessary preparations for fight, and encourage the inferior officers and men to fight, shall suffer death, or such punishment as a court-martial shall deem him to deserve. And if any person shall treacherously or cowardly yield or cry for quarter, he shall suffer death.

Desertion is a capital offence, and any commander receiving a deserter, knowing him to be such, may be cashiered.

Officers behaving in a scandalous, oppressive, or fraudulent manner shall be dismissed.

All other crimes not capital shall be punished according to the laws and customs at sea; but no person shall be imprisoned for longer than two years.

## COURTS MARTIAL.

Commanders-in-chief are empowered to call courts martial, consisting of commanders and captains.

If five or more ships shall meet on a foreign station, the senior officer may hold courts martial and preside.

No court-martial shall consist of more than thirteen, nor less than five, members. And, after trial begun, no member shall go on shore until sentence, except in case of sickness, upon pain of being cashiered. The judge-advocate and all officers constituting a court shall be upon oath.

The power given by the statutes remain in force with respect to ships wrecked, lost, or destroyed, until they be discharged, or the crew removed to another ship, or till a court-martial has been held to investigate the loss of the vessel. If, upon inquiry, it appear every one did his duty, their pay shall go on; as, also, shall the pay of officers and seamen taken by the enemy, having done their best to repel the enemy, and behaved obediently.

Soldiers and seamen and non-commissioned officers in the army and navy, are privileged to send and receive letters by the post on the payment of 1d.

By 55 Geo. III. c. 60, no will of any petty officer or seaman, *before his entry into his Majesty's service*, shall be valid to bequeath any wages, prize-money, bounty, or other allowance arising from such service.

The 6 Geo. IV. c. 18, makes some useful provisions for facilitating the payment of ships' companies, and for enabling the non-commissioned officers, seamen, and mariners to receive a portion of their pay monthly, instead of receiving it, as formerly, in a lump, and at an indefinite period.

By 59 Geo. III. c. 58, seamen, in the merchant-service, whose wages amount to not more than 20*l.* may obtain them by a summary process on application to one or more justices of peace: this act is continued for seven years by 7 Geo. IV. c. 59.

No sailor, soldier, or volunteer can be arrested for less than 20*l.*; but this, under the new law of arrest, has ceased to be an exclusive privilege.

## CHAP. XXIX.

*Protestant Dissenters and Roman Catholics.*

THE penalties and disabilities imposed on certain classes of religionists, on account of their dissent from the doctrine and discipline of the established church, have been gradually on the decline for more than a century, so that comparatively little remains of that formidable penal code which interdicted, to a large portion of the community, not only the enjoyment of their civil immunities, but the free disposal of their persons and property.

## PROTESTANT DISSENTERS.

By the Toleration Act, 1 W. & M. c. 18, various penal laws were repealed, so far as they affected Protestant Dissenters, on condition of taking the oath of allegiance and subscribing to certain declarations against Popery. But these conditions were further modified by an important statute at the close of the last reign, the 52 Geo. III. c. 155, of which the following are the most important provisions :—

Any congregation of Protestants amounting to twenty, exclusive of the servants and family of the house or place in which the assembly is, is required to be certified to and registered once a year in the bishop's or arch-deacon's court, and at the general or quarter sessions. Penalty, for non-observance, a sum not exceeding 20*l.* nor less than 20*s.*

Preachers and persons resorting to any place of worship so certified and registered are exempted from *all* penalties, in the same manner as if they had taken the oath, and made the declarations prescribed in the Toleration Act. But any one preaching or teaching at such place shall, when required by a magistrate, take the oath, and make the declarations specified in the 19 Geo. III. c. 44, which requires the party to declare himself to be a Christian and Protestant, and that he believes the Scriptures to contain the revealed will of God, and to

be the rule of doctrine and practice. Preachers or teachers not called upon to take the oath may require any magistrate to administer such oath to them, and to give them a certificate thereof, which will exempt them from serving in the militia and certain civil offices, supposing they employ themselves in the duties of a teacher or preacher, and do not follow any secular trade or occupation, except that of school-master.

No congregation shall meet with the doors locked or otherwise fastened under a penalty not exceeding 20*l.* nor less than 40*s.*

By the 12th section, persons wilfully disturbing or molesting the minister, or any individual assembled for religious worship in the manner authorized by the act, may, on conviction, at the next quarter sessions, suffer the penalty of 40*l.*

ROMAN CATHOLICS.

The condition of the Roman Catholics has also been considerably ameliorated, and a mass of restrictive and oppressive statutes swept away by the tolerant acts of the late and present reigns.

The 31 Geo. III. c. 32, explained by the 43 Geo. III. c. 30, provides that a Roman Catholic, having taken the oaths and made the declarations therein prescribed, shall not be prosecuted under any statute for not repairing to a parish church, nor for attending or performing mass, or other ceremonies of the church of Rome; provided that such mass is not celebrated in any place till it is ~~certified~~ to the sessions, nor any minister officiate there till his name and description is recorded.

If any Roman Catholic is elected into any parochial office, he may execute the same by deputy. But every minister who has qualified under the 43 Geo. III. is exempt from serving on juries, and from being elected into any parochial office.

A Roman Catholic minister is still prohibited from officiating in any place of worship having a steeple and a bell (except in Ireland), or wearing the habit of his order, except in a place allowed by this statute, or in



a private house where there are not more than five persons beside the family.

No Catholic priest can teach in an endowed school, nor can he receive into his school the child of any Protestant parent. Neither can any Roman Catholic found any religious order or society bound by monastic vows, or any school or college: and all uses, trusts, and dispositions of property which were before unlawful remain so still.

Notwithstanding these disabilities, great concessions have been made within these few years. By an act of the Irish parliament, Catholics are enabled to hold certain offices in Ireland upon taking an oath and making a declaration there prescribed; it was, therefore, enacted, by the 53 Geo. III. that persons who, having so qualified themselves, held offices in Ireland, should not be liable to any penalties in England; and, also, that persons so qualified, and having commissions in Ireland in the king's army, might take higher commissions in England, without exposing themselves to any pains or penalties.

The 57 Geo. III. c. 92, enables the king to grant any commission in the army, navy, or marines, without previously requiring the person to take any oaths or make any declarations, leaving the law, however, untouched as to oaths or declarations required to be taken within a given time after acceptance.

In the session of 1824, some further concessions were made to Catholics. By an Irish act of the 9 Will. III. Catholics in Ireland were not allowed to bury the dead in any suppressed monastery or convent, nor to bury in the burial grounds of the established church, unless the Protestant service was celebrated by a minister of the established church. By the 5 Geo. IV. c. 25, both these restrictions are removed, and the Catholics are allowed to bury their dead in suppressed religious houses, or in the Protestant church-yard, according to the ceremonial of their own religion.

By the 5 Geo. IV. c. 79, ALL his majesty's subjects are made eligible to any offices of commissioners of *customs, excise, stamps, or taxes*, or of any other office

in the revenue department subject to the said commissioners, or any offices subject to the post-master-general in any part of the United Kingdom, without taking any oath or making any declaration, except the oath of allegiance and the oaths for the performance of the duties of such office or place.

Roman Catholics, however, are still disqualified from voting at parliamentary elections ; at least the oath of supremacy *may* be tendered to any one coming to vote ; nor can they sit in either house of parliament, because the oath of supremacy and the declaration against Popery must still be made by every member.

In Ireland, Roman Catholics are eligible to vote at elections, but are excluded from both houses of parliament.

In concluding this account of religious disabilities we must not omit to mention the CORPORATION and TEST ACTS, which affect both Protestant Dissenters and Catholics. By the former, no person can be legally elected to any office in any city or corporation, unless, within a twelvemonth preceding, he has received the sacrament of the Lord's Supper according to the rites of the Church of England. The *Test Act* requires every civil and military officer to make the declaration against transubstantiation, and receive the Lord's Supper according to the forms of the established church. But both these acts are comparatively inoperative, since it is usual, at the close of every session of parliament, to pass an act to indemnify those who have not complied with the requisitions of the Corporation and Test Acts.

## PART IV.

### PROPERTY AND ITS INCIDENTS.

HAVING, in the last part, stated the laws which affect persons in their individual and social relations, we come next to those which affect their possessions. But, before entering on the incidents connected with the possession and conveyance of property, it may be convenient to explain the meaning of a few terms, the legal sense of which differs in some degree from that usually intended in common conversation : and, also, to premise a few explanatory observations on the nature of tenures, and the different modes of acquiring property.

#### *Explanations.*

Property may be defined, any thing possessing exchangeable value, and is either *real* or *personal*.

*Real* property consists of lands, tenements, and of such things as are permanent, fixed, and immoveable.

*Personal* property consists of money, goods, and other moveables.

*Chattels* are synonymous with personal property.

*Estate*, in ordinary discourse, is applied only to land ; but, in law, obtains the same signification as property, and may be either *real* or *personal*.

*Hereditaments* is a general term, including not only land and tenements, but whatever may be intrusted or conveyed to another ; as rents, advowsons, common, right of way, annuities, offices, &c.

*Manors* are as ancient as the Saxon constitution, and imply a certain territorial domain, on part of which the lord resided and cultivated, the rest being distributed among his tenants. They were formerly called *baronies*, as they still are *lordships* ; and each lord was empowered to hold a court, called the court-baron, for redressing misdemeanors and settling disputes among the tenants.

*Franchise*, or *liberty*, for the terms are synonymous, is defined a royal privilege, or branch of the king's pre-

rogative, subsisting in the hands of a subject. To be a county palatine is a franchise vested in a number of persons. So it is to have the right of free-warren, to hold a court-leet, or even for a number of persons to be incorporated, and maintain perpetual succession, and do other corporate acts ; each individual being said to have a franchise, or freedom.

Lastly, the reader will frequently meet with words terminating in "*or*" and "*ee*;" in all such cases, the former obtains an *active* signification, implying the person who does an act, the latter a *passive*, denoting him to whom the act is done. Thus, he that grants a lease is the *lessor* ; and he to whom it is granted is the *lessee* ; the person who indorses a bill of exchange is styled the *indorsor*, and he to whom it is indorsed the *indorsee*.

## TENURES.

Nearly all the real property of England is supposed to be granted by, and holden of, some superior lord, in consideration of certain services to be rendered to the lord by the tenant or possessor of the property. Of this nature were tenures by *grand* and *petit sergeanty*, both of which imposed certain services relative to the king's person. By 12 Car. II. the servile appendages of grand sergeanty are abolished, but the honorary services, such as carrying the king's sword or banner, officiating as butler, or carver at the coronation are retained.

Tenure in *burgage* is where the king, or other person, is lord of an ancient borough, in which the tenements are held by a rent certain. A *borough* is usually distinguished from other towns by the right of sending members to parliament ; and where the right of election is in burgage-tenure, that is a proof of the antiquity of the borough. *Tenure in burgage*, therefore, is when houses, or lands which were formerly the site of houses, in an ancient borough, are held of some lord in common socage by an established rent.

*Socage* tenure, in its more general signification, denotes a tenure by any certain and determinate service, and is that tenure by which most free lands in England are holden.

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Tenure in *gavel-kind* has several peculiarities ; first, that not the eldest son only of the father shall succeed to the inheritance, but all the sons alike ; and, secondly, the estate does not escheat to the lord in case the ancestor is attainted, but descends to his heir, the maxim being “ the father to the bough, the son to the plough.”

Tenure in *borough-English*, which prevails in Stafford and some other ancient boroughs, is that by which the youngest son inherits from the father. It is called borough-English, because, as some hold, it first prevailed in England ; and, the reason of it is said to be that, during the feudal times the lord claimed the privilege of sleeping the first night with the vassal's bride ; so that the lands descended to the youngest from the supposed illegitimacy of the eldest child.

*Copyhold* tenure is that for which the tenant has nothing to show but the copy of the roll, made by the steward in the lord's court, on being admitted to his tenement. Copyholders were anciently no more than villeins, who, by successive encroachments on their lords, at length established a customary right to their estates, which before were held absolutely at the lord's will. No copyhold land can be made at this day, for the requisites of a copyhold estate are that it has been devised time out of mind by copy of court-roll ; and that the tenements are parcel of, or within the manor. Copyholds descend according to the rules of the common law, unless in particular manors : but such customary inheritances cannot be assets liable to the debts of a deceased person, further than they are made subject thereto by the *will* of the testator. It is by this species of tenure that most of the landed property in England is holden, and as the services anciently due from copyholders are now mostly fallen into desuetude, a copyhold estate is nearly equal in value to a freehold inheritance.

The last description of tenure it is necessary to notice is that in *fee-simple*. A tenant in *fee-simple* is one who has the absolute, unconditional, and freehold possession of a property to himself and his heirs for ever, without mentioning what heirs, but leaving that to his own pleasure, or to the disposition of the law.

## CONVEYANCE OF PROPERTY.

The methods of acquiring real property are limited, by the laws of England, to two—*descent* and *purchase*.

*Descent*, or hereditary succession, is the title whereby land or tenements devolve upon a man from his ancestors, as heir-at-law. The *heir*, therefore, is he to whom the law assigns the estate immediately on the death of the ancestor; and an estate so descending to the heir is called an *inheritance*.

Descent at common law is *lineal* or *collateral*; *lineal* descent is from the father to the son, from the son to the grandson, and so forward. *Collateral* descent is a side branch, from the same stem, as from an uncle or a nephew.

Till the death of the ancestor, the person next in the line of succession is called either the *heir apparent*, or the *heir presumptive*. The *heir apparent* is one whose right of inheritance is indefeasible, provided he outlive the ancestor; as the eldest son, or his issue. The *heir presumptive* is one who, if the ancestor die immediately, would, in the present state of things, be his heir, but whose right of inheritance may be defeated by some nearer heir being born: thus, the presumptive succession of a brother or nephew may be destroyed by the birth of a child; or that of a daughter by the birth of a son.

*Purchase*, the other mode of acquiring real property, is a term of wide signification in law, and is used in contradistinction to descent. If an estate come to a man from his ancestor, without writing, that is a descent; but, when a person takes any thing from an ancestor, by will, gift, or deed, and not as heir-at-law, that is a *purchase*.

These appear the most important explanations before entering on the subject of the following chapters; which relate to tithe, common, and other incidents in the enjoyment of property, and the mode in which property may be acquired by will and testament, by mortgage, bankruptcy, insolvency, contract, deed, award, bill of exchange, lien, &c.

## CHAP. I.

*Tithes.*

TITHES are defined, by Sir W. Blackstone, to be a tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants. The first species being usually called *predial*, as of corn, grass, wood, and fruit; the second, *mixed*, as of wool, milk, lambs, pigs, &c. and of these the tenth must be paid in gross; the third, *personal*, as of trade, occupations, fisheries, and the like, of which only a tenth part of the clear gain and profit is due.

The great tithes, as of corn and hay, are generally payable to the rector, or parson; the small tithes to the vicar.

In general, tithes are payable on every thing that yields an annual increase, but not for any thing that is of the substance of the earth, or is not of annual increase, as of mines, minerals, and the like; nor for creatures of a wild nature, as deer and hawks, whose increase, so as to profit the owner, is not annual, but casual.

Tithe is payable for the pasturing of cattle. Gardens, orchards, and nursery grounds yield a tithe of their produce, if sold in the way of trade; timber-wood yields no tithe, except when cut down and sold as firewood, or made into charcoal. Fish taken in the sea, or open river, are not titheable, but taken in a pond, or enclosed water, they are liable. Pigeons, honey, and bees' wax, are titheable. So may deer and rabbits, though wild by nature, be titheable by special custom. But chickens are not titheable if tithe has been paid for the eggs.

The tithe of all extra-parochial lands belongs to the king, in right of his prerogative, *Attorney-General v. Lord Eardley*, 8 Price, 39.

## PERSONS NOT LIABLE TO TITHES.

Day-labourers and servants in husbandry are not liable to personal tithes.

The king, by his prerogative, is discharged from all tithes. Nor shall a vicar pay tithes to his rector, nor a rector to his vicar.

Persons holding the lands of any abbey, dissolved by the 31 Hen. VIII. c. 13, are free and discharged of tithe in as ample a manner as the abbeys themselves formerly held them. It is from this provision that lands, which were formerly abbey-land, now claim to be tithe-free. But this exemption does not extend to land belonging to the *lesser monasteries*; that is of monasteries whose landed income did not exceed 200*l.* per annum, and which were dissolved by the 27 Hen. VIII. c. 28.

Lands may be exempt from tithe, first, by *composition*; and, secondly, by *custom*, or *prescription*.

A *composition* is when an agreement is made between the owner of the land and the parson, or vicar, with the consent of the ordinary and his patrons, that such land shall, for the future, be discharged from the payment of tithe, by reason of land, money, or other equivalent given to the parson in lieu thereof; but the 13 Eliz. c. 10, limits the exchange by restraining all parsons and vicars from making any conveyance of the estate of their churches for a longer period than three lives, or twenty-one years: so that no composition for tithe is good for a longer period than twenty-one years, though made with the consent of the ordinary and patron; nor is it binding on the succeeding incumbent, though confirmed by a decree in Chancery.

A discharge by *custom*, or *prescription*, is where, time immemorial, certain persons or lands have been either *partially* or *totally* discharged from the payment of tithe.

In the first case, a *modus*, or compensation, is substituted in lieu of tithe, as two-pence an acre for the tithe of land; or an equivalent in work and labour, so that the parson shall have the twelfth cock of hay in lieu of the tenth, in consideration of the owner making it for him; or, instead of crude and unripe tithe, the parson shall have a less quantity, in greater maturity, as a couple of fowls in lieu of tithe eggs.

When land is *totally* exonerated from tithe, it must



arise either from being anciently abbey-land, the property of the crown, or some other cause already specified.

For a modus, or equivalent, to be good, it must be certain and invariable; it must be beneficial to the parson; it must be permanent and durable; and, lastly, it must be a fair and equitable composition, and such as has existed time out of mind. *Time out of mind*, as explained in the first Part, is considered to commence from the beginning of the reign of Richard I. or before the year 1189.

#### OTHER REVENUES OF THE CHURCH.

Beside tithe, various other ecclesiastical dues are usually considered part of the revenues of the church; as *oblutions*, *Easter-offerings*, *mortuaries*, and *surplice-fees*. These are all either voluntary payments, or due by custom, upon particular festivals and seasons, or upon marriages, deaths, baptisms, and purification of women.

*Oblutions* are certain customary offerings, payable on the death of individuals, or on the celebration of mass.

*Easter-offerings* are payable from every person in the parish of sixteen years of age and upwards, by the master or mistress of the family, after the rate of two-pence per head.

*Surplice-fees* are payable for every marriage, whether by banns or license; for every funeral, churching, or christening, according to the custom of the parish.

*Mortuaries* are claimed on the death of each person in the parish; if a person, after his debts are paid, leave chattels to the value of 6*l.* and under 30*l.* the mortuary is 3*s.* 4*d.* If to the value of 30*l.* and under 40*l.*—6*s.* 8*d.* If to the value of 40*l.*—10*s.* Beneficed clergymen are exempt from the payment of mortuaries, except to the bishop of the diocese, where they hold their benefice and reside.

#### MODE OF RECOVERING TITHES AND DUES.

The ecclesiastical courts have no jurisdiction to try the *right* of tithes, unless between spiritual persons; in ordinary cases, between spiritual men and laymen, they can only compel the payment of them when the

right is not disputed. So, in disputes about tithes, if the defendant plead any custom, modus, or composition, or other matter, in which the right of tithing is involved, this takes the question out of ecclesiastical jurisdiction; for the law does not allow the existence of such a right to be decided by the sentence of a spiritual judge, who may be interested therein, without the verdict of a jury.

By 2 & 3 Edw. VI. c. 13, if any person carry off the *great tithe* of corn, hay, and the like, before the tenth part is duly set forth, or agreement made with the proprietor; or if he hinder the proprietor, or his deputy, from viewing and carrying away his tithe, such offender shall pay double the value of the tithe, to be recovered, with costs, in an ecclesiastical court. By a preceding clause in the same statute, the treble value of the tithe so subtracted or withheld may be sued for in the temporal court.

A more summary method is provided by 7 & 8 W. III. c. 6, for the recovery of *small tithes* under the value of 40s.; which enacts that, when a person refuses to pay them twenty days after demand, the clergyman may complain, in writing, to two justices of the peace, who, after summoning the party, are to hear and determine the complaint, and give a reasonable allowance for the tithe, and costs not exceeding 20s. Persons claiming an exemption, may give security to pay costs, and try the question. This act does not extend to the city of London, or any other place, where the ecclesiastical rights are settled by act of parliament.

By 7 & 8 W. III. c. 34, when any quaker shall refuse to pay or compound for his tithes, two justices of the peace may summon him before them, and ascertain what is due from such quaker, and direct the payment, so that the sum ordered do not exceed 10l.; and, upon refusal, levy the money. Persons aggrieved may appeal to the next general quarter sessions.

The provisions of these acts have been adopted and extended by the 53 Geo. III. c. 127, and 54 Geo. III. c. 68; the first applying to England, the latter to Ire-

land. By the fourth section of each act, the jurisdiction of the two justices is extended to *tithes, oblations, and compositions, of the value of 10l.*; and, by the sixth section, in respect of tithes and church-rates, due from quakers, to 50l. In either case, one justice is made competent to receive the original complaint, and to summon the defaulter before two.

The 7 & 8 W. III. c. 6, does not allow the magistrate to act when interested in the suit; to remedy which, the 7 Geo. IV. c. 15, provides that, where a justice is the *patron* of a living, the small tithes may be recovered before the justice of the adjoining place or county.

#### THE LONDON CLERGY.

The situation of the London clergy is different from that of the clergy in other parts of the kingdom. In the reign of Hen. VIII. continual altercations took place between the citizens and the clergy, relative to tithes and ecclesiastical dues. To put an end to these disputes, the 37 Hen. VIII. c. 12, established a commission, at the head of which was the archbishop, with full power to give to their decrees the force of law, *if they were enrolled* in the Court of Chancery before the 1st of March, 1545. By a decree of this commission, the tithe of houses and buildings are directed to be paid quarterly, after the rate of 2s 9d. for every 20s. yearly rent, and 2d. for each of the family for the four yearly offerings. Great disputes, however, have risen between the citizens and tithe-holders, respecting the validity of this decree; for it appears, on the authority of Tomlin and Raithby, that it never was enrolled according to the obligation of the act, which, consequently, negatives the claim of the clergy to 2s. 9d. in the pound on the rental.

By the 22 & 23 Car. II. c. 15, the tithes of all the parishes injured by the great fire in 1666, are valued at certain yearly sums, to be levied by an equal rate, quarterly; and, on non-payment, the lord mayor is to grant a warrant of distress for the same; or, on his refusal, the lord chancellor, or two barons of the Ex-

chequer may grant such warrant: but the warden and minor canons of St. Paul's, the parson and proprietors of St. Gregory, are to enjoy their tithes as formerly.

By the 44 Geo. III. c. 89, the annual composition for tithes in the parishes damaged by the fire is augmented and settled at certain fixed sums, from 200*l.* to between 300*l.* and 400*l.* per annum.

By this act, power to make assessments on houses and other buildings before the 21st of August, 1804, is granted to the alderman, common-council, and churchwardens, in each ward, with right of appeal to the lord mayor and court of aldermen. Assessments may be altered every seven years.

From this statement, the established clergy of London appear divided into two classes. *First*, the clergy of the fifty-one parishes damaged by the Great Fire have a fixed annual stipend, leviable by an equal pound-rate on the parishioners, and the amount of which stipend and the mode of assessment of which are now regulated by the 44 Geo. III. c. 89. *Secondly*, the rest of the clergy claim 2*s.* 9*d.* in the pound on the rental, under the authority of a decree made pursuant to the 37 Hen. VIII. c. 12; or, if this decree be disallowed, they claim their ancient tithe, or what other revenue they were entitled to prior to the passing of the act of Henry VIII.

In *Macdougall v. Young*, proof was adduced of search and no enrolment found of this famous decree; in consequence, the jury negatived the claim of the clergy to 2*s.* 9*d.* in the pound on the rental, as founded on the enrolment of the decree, conformably to the condition of the 37 Hen. VIII. c. 12. The court, however, admitted evidence of payment in other parishes as secondary evidence of its having been enrolled, *C P. May 13th*, 1826, 1 Ry. & M. 892.

## CHAP. II.

### *Common.*

RIGHT of common is a privilege by which a person

claims to use what another man's lands, woods, or waters produce, without having an absolute property therein. Common is chiefly of four sorts; common of *pasture*, of *piscary*, of *estovers*, and of *turbary*.

Common of *pasture* is the right of feeding one's cattle on another's land. Commonable beasts are horses, oxen, kine, and sheep: not commonable, are goats, hogs, and geese.

Common of *piscary* is a liberty of fishing in another man's waters; as common of *turbary* is a liberty of digging turf upon another man's ground.

Common of *estovers* is a right of taking necessary wood from another's estate for household use, and the making of implements of husbandry.

There is also common for digging coal, stone, minerals, and the like; but the most general common right is that of pasture, and it is to that we shall limit our observations.

The *property* of the soil of the common is entirely in the lord, and the *use* of it jointly in him and the commoners; and the respective rights of the lord and commoner are ascertained by statute and usage.

In land subject to common right, the right of the lord of the soil ought to be so exercised as not to injure the right of the commoner to the surface. But the right of the commoner may be subservient to the right of the lord; so that the lord may dig clay-pits there without leaving sufficient herbage for the commoner, if it can be proved that such a right has been constantly exercised.

Also, by the statute of Merton, 20 Hen. III. the lord may enclose part of the waste, whereby it ceases being common, provided he leave sufficient waste for the commoner. But when the tenants of the manor have a right to dig gravel or take estovers, the lord has no right to enclose and improve the waste of the manor.

A commoner has only a special and limited interest in the soil, yet he has remedies commensurate to his right. If a tenant enclose or build on the waste, every commoner may have an action for the damage. Where turf is taken away from the common, the lord only is to bring the action.

By 13 Geo. III. c. 81, in every parish where there are common fields, all the arable lands shall be cultivated by the occupiers, under such rules as three-fourths of them in number and value shall agree to; the expense to be borne proportionally. Persons having right of common, but not having lands in such fields, and persons having sheep-walks, may compound for such right by written agreement, or may have parts allotted them to common. Lords of manors, with the consent of three-fourths of the commoners, may lease, for not more than four years, any part of the waste not exceeding one-twelfth part; and the clear rents reserved for the same shall be applied in improving the residue of such waste.

Commons must be driven yearly at Michaelmas, or within fifteen days after.

### CHAP. III.

#### *Mortgage.*

MORTGAGE is a pledge of land, tenement, or any thing immoveable, bound for money borrowed, to be the lender's for ever, if the money be not repaid at the time stipulated: the borrower in these bargains is called the *mortgagor*, and the lender the *mortgagee*.

The perpetual alienation of real property was interdicted by the Mosaic law, which provided that no estate could be sold, or any way conveyed to another, for a longer period than the next jubilee, which occurred every fifty years: when, if not previously redeemed, it reverted, free of incumbrance, to the original owner and his heirs.

Although, by law, a mortgage is forfeited on non-payment of the sum borrowed at the time agreed upon, yet a court of equity will interfere to prevent the sale; and, if the value of the mortgage is greater than the sum advanced, it will allow the mortgagor, within a reasonable time, to redeem his estate, paying to the mortgagee his principal, interest, and expenses: without this, an estate worth 500*l.* might be forfeited for

the non-payment of 50*l*. The advantage thus allowed to the mortgagor is called the *EQUITY OF REDEMPTION*. But, on the other hand, the mortgagee may either compel the sale of the estate, in order to get the whole of his money immediately, or else call upon the mortgagor to redeem his estate; or, in default, to be for ever foreclosed, and thus lose his equity of redemption. In general, if the mortgagee has been twenty years in possession, the Court of Chancery, in conformity to the time of bringing an ejectment, will not permit a mortgagor to redeem, unless, during part of the time, the mortgagor has been an infant or a married woman; or unless the mortgagee admits that he holds the estate as a mortgage, or there is some other special circumstance which forms an exception to the general rule.

It has become the usual practice of late years to insert in a mortgage an *absolute power of sale*, in case of breach of the condition of the deed; this power it is not always advisable for the mortgagee to avail himself of, and it is almost invariably an objectionable power for the mortgagor to grant.

By 4 & 5 W. & M. c. 16, if any person mortgage his estate a second time, and do not inform the mortgagee, in writing, of the prior mortgage, or of any judgment or incumbrance he has voluntarily brought upon the estate, the mortgagee shall hold the estate as an absolute purchaser, free from the equity of redemption of the mortgagor.

But the statute does not bar the widow of any mortgagor from her dower who did not legally join with her husband in such second mortgage, or otherwise exclude herself.

It is held to be an established rule of equity, that the second mortgagee, who has the *title-deeds*, without notice of a prior encumbrance, shall be preferred; because the negligence of the first mortgagee in lending money without taking the *title-deeds* enables the mortgagor to commit a fraud, 1 T. R. 762.

Whatever may be the value of the estate, it is of great importance to those who lend money upon real security to be certain that there is no prior encumbrance

upon it; for it is settled that if a third mortgagee, who, at the time of his mortgage, had no notice of the second, purchase the first mortgage, even pending a bill filed by the second to redeem the first, both the first and third mortgages shall be paid out of it before any share of it can be appropriated to the second; the reason assigned is, that the third, by thus obtaining the legal estate, has both law and equity on his side, which supersede the mere equity of the second. But, in mortgages where none has the legal estate, the rule in equity is that the *prior mortgagor has a prior claim*.

When two different estates are mortgaged to the same person, one cannot be redeemed without the other, *Amb.* 733. So of the other securities given by the mortgagor to the mortgagee.

#### CHAP. IV.

##### *Wills and Testaments.*

A WILL or testament is an act whereby a man declares his intention as to the disposal of his property after his decease.

The words *will* and *testament* are generally used indiscriminately; but they are not words exactly of the same import. A *will* is properly limited to land; a *testament* to personal estate, as money, furniture, or stock-in-trade; and the latter requires executors to see it performed. In what follows, the two terms will be used synonymously, unless otherwise expressed.

The person who makes a will is called a *testator*; he who dies without a will is called an *intestate*.

A gift of land or tenements by will is called a *devise*; the person to whom they are given the *devisee*; and the person who makes the will the *devisor*.

*Residue* is the surplus of the property which remains after paying funeral expenses, legacies, and other appropriations directed by the testator.

#### VERBAL WILLS.

Wills are of two kinds, *written* or *verbal*; the latter is



called a *nuncupative* will, being made by word of mouth before witnesses. A nuncupative or verbal will can extend only to *personal* estate, for no real estate can pass by will, unless it be written and properly attested.

By the Statute of Frauds, 29 Car. II. c. 3, no verbal will is good where the property bequeathed exceeds the value of 30*l.* unless proved by the oath of three witnesses present at the pronouncing the same, and bid by the testator to bear witness that such was his will, or words to that effect.

Neither is such verbal bequest valid, except in case of sudden illness, or travelling, unless made in the last sickness of the testator, and in the dwelling where he had resided at least ten days before.

After the expiration of six months from the speaking of the testamentary words, no testimony can be received to prove any verbal will, except the said testimony, or the substance thereof, were committed to writing within six days after. Nor shall such verbal will be proved till fourteen days after the death of the testator, to give time for the widow, or next of kin, to contest the will, if they think proper.

No *written* will shall be revoked or altered by any subsequent verbal one, unless the same be, in the life time of the testator, reduced to writing, and by him made over and approved, and the same witnessed by three persons at least.

Further, it is necessary to repeat that a verbal will can extend only to personal effects, and that the testamentary words by which it is made must be spoken with an *intent to bequeath*, not any loose expressions in the sick person's illness.

These precautions in verbal wills do not extend to soldiers in actual service, nor to sailors at sea, who are exempt from the operation of the Statute of Frauds.

#### DIRECTIONS FOR MAKING A VERBAL WILL.

When a person is seized with disorder, or receives personal injury, that indicates the approach of death before his will could be written, he should desire three competent witnesses (respectable and disinterested

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neighbours are the most proper) to hear his will respecting the distribution or disposal of his personal estate; and in their presence and hearing, he should declare his will by word of mouth, and request them to bear witness to the same.

If the testator die, his will should afterwards be written, agreeably to the following form:—

*“ The last will of John Fisher, late of Newgate-street, London, gentleman, deceased, declared by him by word of mouth, the 21st day of August. [Here insert the words spoken by the deceased, and conclude thus:] These were the words spoken by the said deceased John Fisher, in the presence of us, who have hereunto subscribed our names, as witnesses thereof, this 5th day of September, 1825.”*

(Three witnesses to sign here.)

### PERSONS NOT QUALIFIED TO MAKE A WILL.

The following persons, either for want of sufficient discretion, for want of free will, or from criminal conduct, are deemed unqualified to dispose of property by will. 1. Infants, under twenty-one years of age. 2. Idiots, lunatics, and persons in their dotage. 3. A man born deaf and dumb; but a person who is so by accident may, by writing or signs, make a will. 4. A drunken man, when so far intoxicated as to be deprived of his reason. 5. A person convicted of treason, or felony, can make no will. 6. Outlaws cannot dispose of their goods and chattels by will, they being forfeited; but they may of their lands, as they are not forfeited by outlawry.

In the same way, persons guilty of suicide may devise the *real* estate; but the *personal* estate is forfeited to the crown.

A married woman is incapable of making a will without the consent of her husband. But, if her husband be banished for life, she may make a will, and act in every thing as a single woman. If a married woman have any pin-money, or separate maintenance, she may bequeath it without the husband's consent.

## PROPERTY DEVISABLE BY WILL.

All *personal* property, consisting of money or goods, debts due, bonds and leases, property in the funds, mortgages, and advowsons, may be bequeathed by will, and not only those in actual possession, but those which the testator may afterwards acquire.

Formerly, no *real* estate could be devised for longer than a term of years ; but now every person is enabled to dispose of the whole of his landed property to whom and what objects he pleases (except to *charitable uses*), and that even to the total disinheriting of the heir-at-law ; notwithstanding the vulgar error of the necessity of leaving the *heir a shilling*, or some other legacy, effectually to disinherit him.

Until a recent act, it was necessary in devising *copyhold* estates to pass the estate by a surrender, according to the custom of the manor in which it is held, to such uses as the testator, by his will, shall appoint ; but, by the 55 Geo. III. c. 192, the necessity of a surrender to *the use of a will* is done away with ; the devisee, upon admittance, paying all such stamp-duties and fees as would have been payable if the surrender had been duly made. The object of this statute is to supply that mere formal surrender, which the devisor was only prevented from making by ignorance, accident, or sudden death, and which, in many instances, a court of equity would have supplied the want of.

Some restraints are still continued on devises to *CHARITABLE USES* by the Mortmain Acts, which were intended to check the accumulation of land in the hands of religious or corporate bodies, by which it became comparatively unproductive ; and also to control the weakness of those who vainly thought to extenuate the wickedness of their lives by leaving their property to be applied to works of piety or charity. The last act of this description is the 9 Geo. II. c. 36, and probably the provisions of this law might be safely repealed in an age inclined to be sceptical in matters of faith, and which, under the guidance of the New School of political

economy, is not likely to fall into an excess either of posthumous or contemporary benevolence.

By the act of Geo. II. no lands or tenements, or money to be *laid out therein*, shall be given for or charged with any charitable use whatever, unless by *deed indented*, executed in the presence of two witnesses, twelve calendar months before the death of the donor, and enrolled in the Court of Chancery within six months after its execution, and, unless such gift be made to take effect *immediately*, without the power of revocation.

Devises to the two universities, and to the colleges of Eton, Winchester, and Westminster, are excepted out of the statute. And by 5 Geo. IV. c. 39, s. 3, to the British Museum: though, in a recent case, 2 *Sim. & Stu.* 594, the vice-chancellor decided otherwise, apparently from the inadvertence of his Honour and the counsel for the plaintiffs of the existence of this last act.

In the opinion of lord Hardwicke, persons are at liberty to leave by *will* a sum of money, or other *personal* property, to works of charity, provided it is not directed to be invested *in land*. And, by 43 Geo. III. c. 107, every person is at liberty, by deed, or will, to give real or personal property for the augmentation of Queen Ann's bounty. Another act, in the same year, allows devises by deed enrolled, or will executed three calendar months before the death of the testator, of real or personal property to the amount of 500*l.* for the repair of any church or parsonage house.

#### DIRECTIONS FOR MAKING A WRITTEN WILL.

It is not necessary a will should be written on *stamped* paper; no stamp-duty attaches till after the death of the testator, and the will is proved in the proper court in the district within which the testator has died.

Whether a will be on paper or parchment, or any other material, is of no consequence; nor what hand it be written in; nor whether some words be omitted, or the name be written at large, or only by notes, or characters: the only essential points are that the will be *legible*, and so far *intelligible* that the intention of the testator can be collected from it.

A memorandum on a scrap of paper, written by a person in contemplation of death, and with a design to make it operative after that event, is a valid testament as to the disposal of *personal* property. And, even if written by another person, without being signed by the testator, it is good, if proof can be adduced that it was made according to his direction, and received his approbation.

In the devising of *land* and *tenements*, more ceremony is required.

By the Statute of Frauds, all devises of land and tenements shall be *in writing*, and signed by the devisor or some other person, in his presence, by his express direction; and the execution shall be witnessed and subscribed by at least three credible persons in the presence of the devisor. All devises of real estate without these precautions are void, and the property descends to the heir-at-law.

This act does not extend to property in the British plantations or colonies; but, if the lands be situated in England, the will, though made abroad, must be made conformably to the statute.

If the will be written in the testator's own hand, and acknowledged in the presence of three credible witnesses, it is immaterial whether the testator's name be written at the top, bottom, or margin of the will; for the statute does not appoint where it shall be signed. But the safest way is to write the name not only at the bottom or end of the will, but at the bottom of each folio, if the will consists of more than one; and the witnesses must write their names under the testator's in the last sheet only.

When the testator owns his signature before the witnesses who subscribe the will, in the testator's presence, the will is good, though all the witnesses did not see the testator sign.

In the case of two devises of the same estate to different persons in the same will, the latter shall not defeat the former; but both devisees shall take moiety, and have the estate either in common or joint tenancy, as the words in the will seem to point out.

When the testator is unable to write, a mark is sufficient signing within the act.

In general, the intention of the testator is so entirely regarded in the construction of wills, that any kind of disposition, not expressly contrary to the rules of law, constitutes a valid will.

When two wills are made, and neither of them dated, the maker is declared to have died intestate; it being impossible to ascertain which is the last will.

#### WITNESSING A WILL.

As to the time and manner of the ATTESTATION, it is necessary the witnesses subscribe the will in the presence of the testator, and their business is not only to witness the manual act of signing, but also to bear testimony to the *sanity* of the testator.

Though the witnesses must all attest the execution of the testator's will in *his presence*, yet it is not necessary that it be done in the presence of each other. Nor is it material in what form, or in what part of the will, the attestation is made; it is sufficient though each witness write his name on separate sheets of the will, and that although the sheets be not tacked together.

Though it is not absolutely necessary in law that the signing of the testator be accompanied with a declaration that the instrument is his will, yet it is more safe to make such declaration. But, in thus publishing a will it is not necessary that the witnesses should be made acquainted with its contents.

Legatees and creditors ought not to be witnesses to a will. By the 25 Geo. II. c. 6, if any person who has a legacy left him by a will is a witness to that will, he loses his legacy: and though the testimony of creditors, who are witnesses, is admissible, yet it may affect their credit with a jury, should the will be disputed. But it seems a legacy to a subscribing witness to a will of *personal* property is not void under the statute, 3 *Addams*, 210, T. T. 1826.

Having complied with the chief requisites of the statute—namely, that the will be in *writing*; 2. that it be *signed* by the testator; and, 3. that it be signed

by *three* witnesses, in the *presence* of the testator ; it then becomes a lawful and valid will and testament.

#### REVOKING A WILL.

With whatever form and solemnity a will may be made, the testator is at full liberty afterwards to revoke or annul it. But, as before observed, on verbal wills, no will, *in writing*, of real or personal property, can be revoked by any *words* or will by word of mouth only ; it can only be done by the testator's purposely burning or destroying the original will, or by some subsequent will or codicil, in writing, duly attested, by which the former will is repealed.

When a man, having made a will, afterwards makes another contrary to it, without expressly revoking the former, this is a revocation in law ; the fact of making a new will implying that the testator had *mentally* revoked the old one. But such an implied revocation will not hold unless the dispositions of the second will be clearly incompatible with the first ; and the second will be effective at the death of the testator.

The alteration of a will is only a revocation to the *extent* of the alteration. And, as to cancelling, however decisive the act may be in *form*, as tearing, defacing, or destroying, yet its effect may be still ambiguous. In order to operate a revocation, it must be done *intentionally* with a purpose of revocation ; and the act, so far as the testator meant to pursue it, must be complete.

Without an express revocation. if a man, who has made a will, afterwards *marry and have a child*, this is a presumptive revocation of his former will, which he made in a state of celibacy ; but both circumstances must actually occur, as marriage, without a child, is no revocation.

A codicil is a revocation of a will if contrary to it ; but so far only as it is repugnant to the particular disposition in the will, leaving it, in all other respects, undisturbed.

A will may also be revoked, on the ground of mistake in the intention of the testator ; but, when a testator revokes a legacy, under an obvious misapprehension of

the facts, as, for instance, that the legatee is dead, who, in truth, is alive, the revocation fails.

After a will has been revoked by any of the circumstances we have mentioned, it may be *re-published*, or, more correctly, re-established, by any act which clearly expresses the intention of the testator to restore it to its original state.

In respect of *personal* property, it is a good republication if the testator, by any act or words, authorize a fair presumption that he desired his will should remain unchanged. But, in estates of *inheritance*, the testator should call in three proper witnesses, and, before them, declare the original will to be agreeable to his intentions, and the signature to be his hand-writing; afterwards, the witnesses sign their names to such new will or re-publication, mentioning the date thereof. The effect of a re-publication upon a will is to give the words used therein the same operation as they would have had had the will been made at the time of the re-publication.

#### CODICILS.

A **CODICIL** is a supplement or addition made to a will by the testator, adding to, explaining, or altering some part of his former disposition. It may be written on the same paper, or affixed to or folded up with the will; or it may be written on a different paper, and deposited in a different place.

In general, the law relating to a codicil is the same as that relating to wills or testaments; like them, it may be either written or verbal: and, when it is used for devising real estate, it requires the same ceremonies to attend its execution as an original devise: and, when its object is the disposition of personal property, the same latitude is admitted in its form and publication as is allowed in an original testament.

Though a man can properly make only one will, he may make as many codicils as he pleases, and the first is equally valid with the last, if not contradictory.

If, by two codicils, the same thing is given to two individuals, the law says they must divide it between them.



## PRACTICAL REMARKS ON WILLS.

It is only by a recent statute that the *real* property of persons, even IN TRADE, after their decease, has been made liable to the payment of their debts on *simple contract*; prior to 47 Geo. III. c. 74, a person possessed of land or houses might leave the whole to whom he pleased, and they would not be liable to any book debts, or debts on bills or notes. And now, a person who is not a trader within the bankrupt-laws is not bound by this obligation, but may devise the whole of his real estate, to the exclusion of creditors, except those on *bond* or *instrument* under the hand and seal of the testator.

Another distinction between real and personal property it is essential to notice; a person may will the whole of the personal estate he is possessed of at the time of making his will, or which he may subsequently acquire; but, if he acquire real estate after making a will, such real estate will not pass by that will, even though the words seem sufficiently comprehensive for that purpose; therefore, it becomes necessary in that case to make a *new will*, or, which is the same thing, if he has no alteration to make in the old one, to re-date and re-publish it agreeably to the forms already mentioned in the devise of real property.

A will of real estate to a man and *his assigns*, without the words "*for ever*" annexed, is construed to be only a devise for the life of the devisee; but it appears, from later authorities, a technical omission of this sort would not defeat the intention of the testator, were it clearly manifest from the tenor of the will he intended the inheritance so to pass, *Loveacres v. Blight*, Cowp. 352.

If an estate is given to A and his heirs, and A die before the testator, the devise is lost, and the heirs of A, unless the will be altered, can claim no benefit from the devise, *White v. White*, 1 Bro. 219.

The operation of the STAMP-DUTIES is of importance to persons possessed of little property, and a considerable saving is made by persons making a will in preference to dying intestate, and leaving their effects to be administered to by the next of kin. In the latter case, the stamp-duty is half as much more as in the former.

Freehold and copyhold estates are exempt from duty; which is an advantage to the heir-at-law over other relatives, that ought not to be forgotten by the testator.

The legacy duty only commences when the bequest is of the amount and value of 20*l.*; so that a legacy of 19*l.* 19*s.* 11*d.* instead of 20*l.* saves 2*l.* in duty, in case the legatee is not a relation by blood.

In legacies to *servants*, if the testator intend the duty should be paid, by the executors, out of the residue, such intention should be clearly expressed; otherwise, by the abstraction of the duty, they may receive much less than the donor intended.

If there be two legacies to the same person, and if, together, they amount to 20*l.* in value, the duty is rated jointly on both.

Lastly, it is recommended to the testator, beside the original will, that he should write and execute two or more copies; they will guard against accidents, be useful to executors and friends, and save expense; for, after a will is proved, a copy cannot be obtained without considerable trouble and expense; and, as to going to read a will at the Prerogative Court, without professional aid (which may be still more costly), it had better not be attempted.

## CHAP. V.

### *Intestacy.*

A PERSON dying without a will, or without a will executed according to the legal forms prescribed in the last chapter, is said to die **INTESTATE**: in this case, it is important to inquire in what manner the law disposes of the property of an intestate; and, first, of the *real estate*.

The eldest son inherits, as heir-at-law, the real property of an intestate. If the eldest son is dead, his eldest son, or issue, succeeds to the land. If the eldest son is dead, without issue, then the lands descend to the second, third, and all other sons of the intestate respectively, in order of birth, and to their issue in like order.

If a man has no sons, nor any issue of them living at his death, his daughter is to inherit; or, if he has more than one daughter, they all inherit equally, and become

joint partners in the land. If the daughters are dead leaving issue, such issue inherit the land, the eldest son of each taking his mother's share; or if no son, then daughters equally.

If a man die without either sons or daughters, the land descends to his eldest brother of the *whole blood*, or his issue; or, in case of the death of the eldest brother, without issue, then to his second, third, or other whole brothers respectively, in order of birth, or their issue. If the intestate has no brothers, then to his sisters of the whole blood equally. If he has neither sons nor daughters, brothers nor sisters, the land goes to the eldest uncle, by the father's side, and his issue; or, for want of such, to his other uncles, by the father's side. In defect of all these, to his aunts, on the father's side, equally among them all, in like manner as to his daughters and sisters.

But though land can ascend *collaterally* to uncles and aunts, yet it can never *lineally* ascend; that is, it can never go to the father or mother, grandfather, or grandmother, of a person dying, but must escheat to the king or lord of the fee.

In the descent of land, relations of the *half-blood* can never inherit: thus, if a man have two sons by different wives, and die, and his first son take the land as heir to him, and die without issue, the son by the other mother, being only his *half-brother*, shall never inherit the land as heir to his brother.

#### DISTRIBUTION OF THE PERSONAL ESTATE.

The division of the *personal* property of an intestate is regulated by the 22 & 23 Car. II. called the Statute of Distributions, which provides that the surplusage of the effects of an intestate, after paying his debts and funeral expenses, shall, after the expiration of a year be distributed by the administrators in certain portions.

If the deceased leave a widow and children, one-third to the widow, and the remaining two thirds, in equal portions, to the children; or, if any of the children be dead, to their issue in equal portions. If the intestate leave no children, nor lineal descendants of children, then a moiety goes to the widow, and the residue to the

nearest of kin of the deceased or their representatives. If the intestate leave children, but no widow, then the whole is distributed among the children; or, if any of them be dead, among their representatives.

If a child shall have been portioned, or otherwise provided for, by the father during his life-time, to an amount equal to the distributive share of the other children, he shall be excepted from this distribution; and if he shall have been in part provided for, he shall only have so much of the surplusage as will make his share equal to the rest. But the *heir-at-law* will have his *full* distributive share, notwithstanding the land he may receive by descent; if, however, he has had an advance in money, he abates for the same as another child.

If there is neither wife nor children living, nor representatives of children deceased, the whole property of the intestate is given to the father of the deceased. If he has no father living, the whole shall go to the mother, brethren and sisters of the deceased, in equal portions. If there are neither brothers nor sisters, the whole shall go to the mother.

If the mother be dead, the whole must go to the brothers and sisters and their children; but, if there are neither mother, brother, nor sister, then the whole must go to the grandfather or grandmother.

After these, uncles, aunts, and nieces, of the intestate are admitted in equal portions. And, on failure of all the above-mentioned relatives, then the whole shall go to the next nearest of kin who shall be alive.

Between property acquired by *inheritance* and that by *distribution* there are two points of distinction. First, real property can never lineally ascend to the father, but personal property may ascend. Secondly, the *half-blood*, who cannot inherit the real estate, share equally with the whole blood in a distribution of personal property.

## CHAP. VI.

### *Legacies.*

A LEGACY is a bequest or gift of money, goods, or

chattels, by will or testament; the person to whom it is given is called the *legatee*; and if the gift is of the residue of an estate, after the payment of debts and other legacies, he is called the *residuary legatee*.

If executors omit to pay legacies at the expiration of one year after the death of the testator, the legatees will be entitled to interest from that period. But no action can be brought for the non-payment of a money-legacy; the Court of Chancery being the proper jurisdiction for redress, *Deeks v. Strutt*, 5 T. R. 690.

In case of a deficiency of assets to pay the debts, all the general legacies must abate proportionally; but a specific legacy of a piece of plate, a horse, or the like, is not to abate, unless there be not sufficient without it. And, if the legatees have been paid, they are afterwards bound to refund a rateable part in case debts come in more than the amount of the residue after the legacies are paid.

If a legatee die in the life-time of the testator, the legacy falls into the residue of the personal estate; but if the bequest is so clearly worded as to show the testator intended it to go to the children or representative of the legatee in case of his death in the testator's life-time, the legacy will not fall into the residue.

If a contingent legacy be left to any one, as when or if he attain the age of twenty-one, and if he die before that time, it is a lapsed legacy. But a legacy *to be paid* when he attain the age of twenty-one years is a vested legacy; and if the legatee die, his representative shall receive it at the time it would have become payable had the legatee lived. The reason of this distinction is, that the insertion of the words "*to be paid*" have the effect of *immediately* vesting the legacy, and the period mentioned is not a condition of payment, but the completion of the time when the legatee should be put in complete possession.

General conditions imposed on legatees not to marry are void, as *immoral*, by tending to prevent the multiplication of the species; but conditions which restrain marriage within a reasonable time, or to particular persons, are good, because the liberty of marriage is

not taken away, only a qualification imposed which may be expedient, *Long v. Rickett*, Vice-Chan. Dec. 1824.

So a condition by a husband that his wife shall be entitled to the legacy he has left her only so long as she continue his widow is binding.

Legacies bequeathed to married women ought, in general, to be paid to their husbands; but the executor, with the consent of the wife, may withhold the payment of such legacies till the husband consent to a suitable provision or settlement on the wife.

An inaccurate description or addition of a legatee, correctly named, will not destroy the effect of a legacy given to him by nomination. So, also, if the testator mistake the name of the thing bequeathed, having no other thing to which the term can be applied, the wrong description of the bequest will not defeat the legacy.

In leaving two separate legacies of the same amount to the same person, it is proper to express whether the second legacy be an addition to or in lieu of the first legacy.

Unless the testator has otherwise directed, the residuary legatee is entitled not only to what remains after the payment of debts and legacies, but, also, to whatever may fall into the residue after the date and making of the will.

If no disposition is made of the residue, the executor is entitled to it; and, if no executor be named, it will be distributed among the testator's next of kin, according to the Statute of Distribution.

## CHAP. VII.

### *Bills of Exchange.*

A BILL of exchange is a mercantile contract, generally written on a broad but short slip of paper, whereby one person orders or requests another to pay a certain sum of money, on his account, to a third person, or to his order, at a time therein specified.

The person who makes or draws the bill is termed the *drawer*; he to whom it is addressed is, before acceptance, called the *drawee*, and afterwards the *acceptor*;

the person for whom it is drawn is termed the *payee*, and when he endorses the bill the *endorser*; and the person to whom he transfers it is called the *endorsee*: and, in all cases, the person in possession of the bill is called the *holder*.

Bills are either *foreign* or *inland*: *foreign*, when drawn by a merchant abroad upon his correspondent in England, or vice versâ; *inland*, when both the drawer and drawee reside in the kingdom. Formerly, foreign bills were regarded of more importance, in the eye of the law, than inland bills; but now they are both nearly placed on the same footing, and the law and custom of merchants in regard to one extend equally to the other.

Inland bills generally consist of one piece of paper; but foreign bills generally consist of several *parts*, in order that the bearer, having lost one, may receive his money on the other. The several parts of a foreign bill are called a *set*; each part contains a condition that it shall be paid *provided the others are unpaid*.

No particular form or set of words is necessary in a bill, any more than in a bond or other deed: the following, however, is the usual style of foreign and inland bills.

#### FORM OF A FOREIGN BILL.

*London, 1st March, 1826.*

*At twenty days after date, [or at one or two usance, or at sight, or certain days after sight, as the case may be,] pay this my first bill of exchange (second and third of the same tenor and date not paid) to Messrs. Arthur Jones and Co. or order, 1000francs, value received of them, and place the same to account, as per advice from*

ROBERT ANDREWS.

*To Messrs. Dumont and Mallecot,  
Banquiers, Paris.*

#### FORM OF AN INLAND BILL.

£100.

*London, 3d March, 1825.*

*Two months after date, [or at sight, or on demand, or certain days after sight, as the case may be,] pay to*

*Mr. Thomas Brown, or order, one hundred pounds. Value received.*

ROBERT HARDCASTLE.

*To Mr. Henry Heaps,  
Hosier, Bristol.*

The chief property of a bill of exchange is that it is *assignable* to a third party not named in the bill, so as to vest in the assignee a right of action in his own name; which right of action no release by the drawer to the acceptor, nor set-off, or cross demand due from the former to the latter, can affect.

Bills of exchange are assignable by endorsement; but, if payable to *bearer*, they are transferable by delivery without endorsement.

#### PARTIES TO A BILL.

Persons under age, and married women, are incapable of being parties to a bill of exchange.

But though no action can be maintained on a bill drawn, endorsed, or accepted by persons so incapacitated, yet it is valid against all other competent parties thereto. Thus, in an action against the acceptor of a bill by the endorsee, it is no defence that the drawer was at that time an infant, or feme covert; for, though the holder is precluded from suing any anterior party, he will still be at liberty to sue any subsequent party to the bill.

As agency is a ministerial office, persons incapable of contracting in their own right may be agents for this purpose. A bill drawn, endorsed, or accepted by the party's agent, is said to be done by *procuration*. But, in such cases, it is incumbent on the agent, if required, to produce his authority to the holder, and, if he do not, the holder may treat that bill as dishonoured.

When a person acts as agent in a bill, he must either write the name of the principal, or state, in writing, that he acts as agent, otherwise the act will not be binding on the principal; and, if a person act in his own name, without stating that he acts as agent, he will be per-



sonally liable, unless in the case of an agent contracting on the behalf of government.

Corporations, by the intervention of their agents, may be parties to a bill of exchange.

The liability of partners to a bill of exchange has been already stated under the head PARTNERS, p. 100.

#### REQUISITES OF A BILL.

The two principal requisites to a good bill are, first, that it is payable *at all events*, not dependent on any contingency, nor payable out of a particular fund ; and, secondly, that it be for the *payment of money only*, and not for the payment of money and the performance of some other act, as the delivery of a horse, or the like.

If, however, the event on which the payment is to depend, must inevitably happen, it is of no importance how long the payment is deferred. Therefore, if a bill be drawn, payable six weeks after the death of the drawer's father, or payable to an infant when he shall come of age, it is valid and negotiable : so, an order to pay money as the drawer's quarter or half-pay, by advance, is a good bill.

A bill cannot be given in evidence unless it be *duly stamped*, not only with a stamp of the proper value, but also of the proper denomination.

The *date of a bill* ought to be clearly expressed, at full length, in words. But the date is not in general essential to the validity of a bill ; for, when the date has been omitted, it will be intended to bear date on the day when it was made.

The *negotiability* of a bill depends on the insertion of sufficient operative words of transfer. The modes of making a bill transferable are by making it payable to A or order, or to A or bearer, or to bearer generally.

If a bill, after it has been drawn, accepted, or endorsed, be *altered* in any material respect, without the consent of the parties privy thereto, it will discharge them from all liability. But the mere correction of a mistake, as by inserting the words " or order" will not vitiate the bill, if made before the bill were circulated.

It is not essentially necessary to insert the words

“ *value received*,” they being implied in every bill and endorsement. But, to entitle the holder of an inland bill of 20*l.* or upwards, to recover, in default of acceptance or payment, these words should be inserted.

## OF THE CONSIDERATION.

A bill is presumed to have been originally drawn upon a good and valuable *consideration*. But a want of sufficient consideration may be insisted on in defence to an action on a bill; and when the bill is for *accommodation*, and the holder has given value only for a part of that amount, he cannot recover on the bill beyond that sum.

The bill may be void if the consideration given has been made illegal by statute; as for signing a bankrupt's certificate, for money won at *gaming*, or for money bet, or on *usurious* contract. But, with respect to gaming, it is held, that a bill founded on a gambling transaction is good in the hands of a *bonâ fide* holder; and, by the 58 Geo. III. c. 93, a bill or promissory note, though founded upon an usurious contract, does not vitiate the same in the hands of a *bonâ fide* holder, not knowing the usurious contract.

Dropping a criminal prosecution, suppressing evidence, or compounding a felony; a recommendation to an office in the king's household; a smuggling or stock-jobbing contract; are all illegal considerations.

A bill or promissory note given for past seduction is valid; but for future prostitution illegal.

No person can insist upon a want of consideration, who has himself received one, nor can it ever be insisted on if the plaintiff, or any intermediate party between him and the defendant, took the bill *bonâ fide* and upon good consideration.

## ACCEPTANCE OF A BILL.

An acceptance is an engagement to pay a bill according to the tenor of the acceptance; which may be either *absolute* or *qualified*. An *absolute* acceptance is an engagement to pay the bill according to its request, which is done by the drawee writing “Accepted” on the bill,

and subscribing his name; or writing "Accepted" only, or merely subscribing his name at the bottom or across the bill. Any act, indeed, of the drawee, which demonstrates an intention to comply with the request of the drawer, will amount to an acceptance. An expression, *Leave the bill, and I will accept it*, or a direction to a third person to pay the bill, *written* thereon, is a sufficient acceptance. A verbal promise that, *If the bill came back, he would pay it*, was held a good acceptance.

An acceptance may be *implied* as well as *expressed*; and this implied acceptance may be inferred from the drawee keeping the bill a great length of time, or any other act which induces the holder not to protest it, or to consider it as accepted. But a promise to accept a bill not then in existence is void, unless it influence some person to take or return the bill.

A *qualified* acceptance is when the bill is accepted conditionally; as when goods conveyed to the drawee are *sold*, or when a navy-bill is *paid*, or other future event, which does not bind the acceptor till the contingency has taken place: when such conditional acceptance will become as binding as an absolute acceptance.

An acceptance may, also, be *partial*; as, for instance, to pay 100*l.* instead of 150*l.* or to pay at a different place, or time, from that required by the bill. But, in all cases of a conditional or partial acceptance, the holder should, if he mean to resort to the other parties to the bill, in default of payment, give notice to them of such conditional or partial acceptance.

A bill need not be presented for acceptance when it is payable at a certain day, because the time is then running on equally, whether accepted or not, and the responsibility of the drawer is not protracted. If it be payable at a certain time *after sight*, then it is necessary to present it within a reasonable time, because, by not doing so, the responsibility of the drawer is indefinitely protracted, *Bayley, on Bills*, 112.

When the drawee refuses to accept, any third party, after protesting, may accept for the honour of the bill generally, or for the drawee, or for a particular endorser:

in which case, the acceptance is called an acceptance *supra protest*.

The alteration of the date of a bill after acceptance, whereby the payment would be accelerated, vacates the instrument; and no action can afterwards be brought upon it even by an innocent endorsee for a valuable consideration, *Master v. Miller*, Pratt Dig. 207.

If a bill be drawn on several persons, not connected in co-partnership, an acceptance by one will bind him, but him only. But, in the case of joint-traders, an acceptance by one will bind the rest.

In case of the failure of the drawer, the drawee ought not to accept bills after he is aware of that circumstance. But if the drawee, not having notice of the bankruptcy of the drawer, accept a bill drawn upon him after such bankruptcy, he will be justified in payment of such acceptance, although he has afterwards heard of such bankruptcy.

A bill payable at the house of the acceptor's banker must be presented for payment within the usual banking hours, which, in London, do not extend beyond 5 o'clock. If it be presented after such hours without effect, it is no evidence of the dishonour of the bill, so as to charge the drawer.

If a bill is made payable after *sight*, the date of the acceptance should appear thus: "*Accepted Jan. 1, 1827.*"

By the 1 & 2 Geo. IV. c. 78, bills accepted, payable at a banker's or other place, are to be deemed a *general* acceptance; but if they are accepted, payable at a banker's or other place *ONLY*, they are to be deemed a *qualified* acceptance, and the acceptor is not liable to pay the bill, except in default of payment, when such payment shall have been first duly demanded at such banker's or other place. It is, also, provided, by the same act, that no acceptance of any *INLAND* bill of exchange is sufficient to charge any person, unless such acceptance be *in writing on the face of such bill*, or, if there be more than one part of such bill, on one of the said parts.

In case of *accommodation* acceptances, it is advisable to have a written undertaking, or a counter bill, or note from the drawer.

## LIABILITY OF THE ACCEPTOR.

The acceptor of the bill is liable to all the parties for payment, from which obligation he can only be relieved by express release, or the Statute of Limitations; but, in the latter case, though six years have elapsed, the acceptor's liability revives, if he *acknowledge* his acceptance, *Leaper v. Tatton*, 16 E. R. 420. Even the drawer may maintain an action against the acceptor, provided he has paid the bill, and has effects in the hands of the acceptor. Neither can the acceptor discharge his liability by the erasure of his name, unless his acceptance has been made by mistake.

A verbal release of the acceptor's liability would suffice; but to render this efficient, the words must amount to an absolute renunciation of all claim upon him for the bill.

## NON-ACCEPTANCE AND NOTICE.

If a bill be presented, and an acceptance refused, or a qualified acceptance only offered, or other objection made, prompt notice must be given to all the parties to whom the holder intends to apply for payment.

In case of a *foreign* bill, notice may be given on the day of the refusal to accept, if any post, or ordinary conveyance, sets out on that day; and, if not, by the next early ordinary conveyance.

Generally, in both foreign and inland bills, notice is given next day to the immediate endorser, and such endorser is allowed a day, when he should give fresh notice to those parties who are liable to him; without promptitude in giving notice, the drawer and the endorsers are discharged from their liability.

The absconding, or absence of the drawer or endorser may excuse the neglect to advise him; and the sudden illness or death of the holder, or his agent, or other accident, will be an excuse for want of a regular notice to any of the parties, provided it has been given as soon as possible after the impediment was removed.

In case of bankruptcy, notice must be given to the assignees, and, if the party be dead, to the executor or administrator. If the party be abroad, notice may be

left at his usual residence, and a demand of payment from his wife would, in such case, be regular.

In case of inland or foreign bills, notice by the post is sufficient; but the letter containing such notice should be delivered at the General Post-Office, or, at least, at a receiving-house appointed by that office.

Though there is no prescribed form of notice, yet it ought to import what the bill is, that payment has been refused by the acceptor, and that the holder looks on the person to whom it is given as liable, and expects payment from him, 4 B. & Cr. 339.

Upon non-acceptance and notice the holder may immediately *sue* the drawer and endorsers, without waiting till the bill become due according to the term of it, 4 East. 481.

## THE PROTEST.

Upon the non-acceptance or non-payment of a bill, the holder, or some other person for him, should protest it. Foreign bills ought to be presented to the drawee by a public notary (to whom credit is due, because he is a public officer), and acceptance demanded. If the drawee refuse to accept the bill, then the notary should draw up a protest for non-acceptance; that is, a minute, comprising a notice of such refusal, and the declaration of the holder against sustaining any loss by such non-acceptance.

Although the words of the 3 & 4 Ann, c. 9, import, *prima facie*, that it is necessary to protest an *inland bill* in order to recover interest and costs, occasioned by the non-acceptance or non-payment, yet that is not the construction put upon them. The practice is, uniformly, not to give evidence of any such protest in an action on an inland bill; and that practice, being specifically brought under the consideration of the Court of King's Bench, was affirmed in *Windle v. Andrews*, 2 B. & A. 696. In practice, an inland bill is rarely protested; it is only *noted* for non-acceptance, but this, without the protest, is wholly futile, and adds nothing whatever to the evidence of the holder, while it entails an useless expense on those who may be liable to pay.

## ENDORSEMENT OF BILLS.

Bills payable to *order*, or to *bearer*, or containing any words to make them assignable, may be endorsed over, so as to give to the endorsee a claim on all the antecedent parties whose names appear upon the bill. But, unless the operative words "to order," "or bearer," or some equivalent term be inserted, it cannot be transferred so as to give the endorsee a claim on any of the antecedent parties, except the last endorser. It is not, however, essential to the *validity* of a bill that it should be transferable, or contain negotiable words to that effect.

In *Geary v. Physic*, the Court of King's Bench decided an endorsement in *pencil marks* is valid within the custom of merchants; the Chief Justice remarking the decision was not likely to do much mischief, the imperfections of this mode of writing being so great that persons would generally take care to have endorsements in ink whenever ink could be procured, 5 B. & Cr. 235.

Bills are transferred either by delivery only, or by endorsement and delivery; bills payable to order are transferred by the latter mode only; but bills payable to bearer may be transferred by either.

On a transfer by *delivery*, the person making it ceases to be a party to the bill; but, on a transfer by *endorsement*, he is, to all intents and purposes, chargeable as a new drawer.

A bill may be endorsed before it is complete, or after the time appointed for payment. In the first case, if a man endorse a blank stamped piece of paper, it will bind him to the amount of any sum which may be inserted, consistent with the stamp, and made payable at any date. If the endorsement be after the bill is due, it is incumbent on the endorsee to satisfy himself that the note is a good one; for, if he omit to do so, he takes it on the credit of the endorser, and must stand in place of the person who was holder at the time it became due.

No particular words are essential to the endorsement of a bill; the mere signature on the back of the bill is, in general, sufficient; such endorsement is called a *blank endorsement*.

A *full*, or *special* endorsement mentions the name of the endorsee in whose favour it is made ; as thus, " pay the contents to A. P. or order," and is subscribed with the name of the endorser.

Such special endorsement precludes the person in whose favour it is made from making a *transfer*, so as to give a right of action against the special endorser, or any of the precedent parties to the bill, and from retaining a payment to their prejudice.

After the payment of a part, a bill may be endorsed over for the residue.

A transfer by endorsement will convey no title, except against the person making it, unless it be made by him, who, for a valuable consideration, has a right to make the endorsement. So, in case of a bill lost by theft or accident, if it be only transferable by endorsement, the thief or finder cannot confer a title against the precedent parties ; for, unless the endorsement be made by the person to whom the bill is payable, it is a forgery : but, if such bill be payable to *bearer*, and, therefore, assignable by mere delivery, the thief or finder may transfer a title against the precedent parties by transferring it. Therefore, an innocent holder, for a valuable consideration, may recover the amount of the bill, though the party from whom he took it, having no title, cannot.

But the holder of a bill that has been lost or fraudulently or feloniously obtained, must, if he sue for payment, prove he obtained it upon good consideration, 4 *Taunt.* 114.

In case of the *loss of a bill*, to entitle the party to recover, he should immediately give notice thereof to the acceptor and all the antecedent parties ; and, when the bill is transferable by mere delivery, should also give public notice of the loss ; but even this will not avail, unless the notice be brought home to the knowledge of the party taking the bill.

The 9 & 10 W. c. 17, enacts, " that if any inland bill be lost or missing within the time limited for its payment, the drawer shall, on sufficient security given to indemnify him, if such bill shall be found again, give



another bill of the same tenor with the first." And, in all cases of the loss of a bill, a court of equity will, on sufficient security being given, enforce payment. See after page 231.

#### PRESENTMENT OF BILLS.

A party taking a bill impliedly undertakes to present it to the proper person, at the proper place, and at the proper time for payment ; and a neglect of any of these, on the part of the holder, or a failure to give notice of the non-payment of the bill, exonerates the drawer and endorsers from their liability.

Bills, however, payable at *usage*, or at a certain time after date or sight, or after demand, ought not to be presented for payment precisely at the expiration of the time mentioned in the bills, but at the expiration of what are termed *days of grace*. Three days' grace are usually allowed for payment ; in case of excise bills, six days beyond the three are granted, if required by the acceptor. But, on bills payable on demand, or when no time of payment is expressed, no days of grace are allowed, but they are payable instantly on presentment.

On bank post-bills no days of grace are claimed : but, on a bill payable at sight, the usual days of grace are allowed from the sight or demand.

Upon the last day of grace, and within a reasonable time before the expiration of that day, a bill must be presented for payment. If the last day of grace be Sunday, Christmas-day, Good-Friday, or any public fast or thanksgiving day, the presentment must be on the preceding day ; and, if it be not then paid, treat the bill as dishonoured.

By 7 & 8 Geo. IV. c. 15, bills and notes payable on the day preceding Good-Friday or Christmas-day, notice of the dishonour thereof may be given on the next day after, and if Christmas-day falls on a Monday, notice may be given on the Tuesday. The same rule applies to any day appointed for a public fast or thanksgiving. And for all other purposes whatever, as regards bills and notes, these days must be considered as Sunday.

The bankruptcy, insolvency, or death of the acceptor, will not excuse the neglect to make presentment. In the first case, the presentment should be made to the bankrupt, or his assignees; and, in the latter, to the executor of the deceased; or, in case there be no executor, at the house of the deceased.

The days of grace allowed ought always to be computed according to the usage of the place where the bill is due. In Great Britain, Bergamo, and Vienna, *three* are allowed; at Frankfort, out of the fair time, *four*; at Leipsic, Nuremberg, and Augsburgh, *five*; at Venice, Amsterdam, Rotterdam, and in Portugal, *six*; at Naples, *eight*; at Dantzic, Konigsberg, and France, *ten*; at Hamburgh and Stockholm, *twelve*; in Spain, *fourteen*; at Rome, *fifteen*; at Genoa, *thirty*; at Leghorn, Milan, and some other places in Italy, there is no fixed time. At Hamburgh and in France, the day on which the bill falls due makes one of the days of grace, but no where else.

*Usance*, or the customary time for which a bill is usually drawn, also varies between different countries. An usance between this kingdom and Amsterdam, Hamburgh, Paris, or any place in France, is one month; an usance between us and Spain, is two; between Leghorn, Genoa, or Venice, three. A double usance is double the accustomed time; a half usance half, and so on.

If the political state of the country when the bill is due, render presentment for payment within due time impossible, presentment, as soon as possible, will entitle the holder to recover.

If a bill has a qualified acceptance, the presentment should be at the place mentioned in such qualified acceptance, otherwise the parties will be discharged from their responsibility.

## PAYMENT OF A BILL.

Payment should be made only to the holder of a bill, or some person properly authorised by him. Payment may be refused unless the bill be produced, 4 *Taunt.* 602.

In all cases of payment of a bill, a receipt should be written on the back; and, when a part is paid, the same

should be acknowledged upon the bill, or the party paying may be liable to pay the amount a second time to a bona fide endorser.

The holder may bring actions against the acceptor, drawer, and all the endorsers, at the same time; but, though he may obtain judgments in all the actions, yet he can recover but one satisfaction for the value of the bill: but he may sue out executions against all the rest for the costs of their *separate* actions, *Bayley, on Bills*, 43.

When a creditor directs his debtor to remit him, by post, the money due to him by a bill, or when it is the usual way of paying a debt, if the bill be lost, the debtor will be discharged; but when the defendant, in discharge of a debt which he owed to the plaintiff, delivered a letter, containing the bills which were lost, to a bellman in the street, it was decided that he was not discharged from the debt, because it was incumbent upon him to have delivered the letter at the General Post-Office, or, at least, at a receiving-house appointed by that office.

#### PROMISSORY NOTES.

A promissory note is defined to be a direct engagement, in writing, to pay a specified sum, within a limited time, or on demand, to a person therein named, or his order, or to bearer.

By the 3 & 4 Ann, c. 9, promissory notes are made transferable, and in all respects so nearly assimilated to bills of exchange, that all the decisions and rules relative to one are, in general, applicable to the other. No formal set of words is necessary to the validity of a promissory note; nor is it essential it should contain any words rendering it negotiable. A note merely promising to account with another, or his order, for a certain sum, *value received*, is a valid promissory note, though it contains no formal promise to pay. The following is the usual form of this instrument:—

£100.

*London, February 25th, 1820.*

*Two months after date, I promise to pay to Mr. Charles Strange, or order, the sum of one hundred pounds, for value received.*

GEORGE DORCAS.

A note, beginning "I promise to pay," and signed by two or more persons, is a *several* as well as a *joint* note, and the parties may be sued jointly or separately; so if the note begin "we jointly and severally promise to pay;" but when a promissory note is made by *several*, thus, "we promise to pay," it is a joint note only.

Promissory notes, bills, and drafts, for less than 20s. being negotiable or transferable, are void; and persons uttering such, by 48 Geo. III. c. 88, are subject to a penalty, not exceeding 20*l.* nor less than 5*l.*, which is recoverable in a summary way before one justice of peace; one moiety to the informer, the other to the poor of the parish.

By 55 Geo. III. c. 184, bankers who shall have issued promissory notes for payment, to bearer on demand, of any sum not exceeding 100*l.* may re-issue the same as often as they think proper. But notes *not* payable to bearer on demand are not re-issuable, under a penalty of 50*l.*; nor without an annual license of 30*l.*

It is only since the passing of the act, in 1797, restraining the Bank of England from paying their notes in specie, that promissory notes under 5*l.* were allowed to circulate; the liberty to circulate such notes was, after several renewals, extended, by the 3 Geo. IV. c. 70, called the Small-Note Act, to the 5th of January, 1839. But this period is abridged by a subsequent act, the 7 Geo. IV. c. 6, by which all promissory notes for less than 5*l.* payable to the bearer on demand, issued by the Bank of England, or by any licensed English banker, and stamped on the 5th of February, 1826, or previously, are not allowed to circulate beyond the 5th of April, 1829.

It is of the utmost importance that bankers and others, taking bills or notes, should know something of the parties from whom they take them; otherwise, if the instrument turn out to have been lost or fraudulently obtained, they may be deprived of their security, in an action by the owner, to recover possession. In *Snow v. Peacock*, C. J. Abbott said, "If a person take a bill, note, or any other kind of security, under circumstances which *ought to excite suspicion* in the mind of any rea-

sonable man acquainted with the ordinary affairs of life, and which ought to put him on his guard to make the necessary inquiries, and he do not, then he loses the right of maintaining possession of the instrument against the rightful owner," *Guildhall, Oct. 25, 1826*. The same point had been previously determined in *Gill v. Cubitt*, 3 B. & C. 466.

#### BANK OF ENGLAND NOTES.

These notes are payable on demand, and are treated as money in the ordinary transactions of business. But they were not made a *legal* tender till the passing of the 52 and 56 Geo. III.; though, prior to that time, by the 38 Geo. III. c. 1, a tender of them in payment protected a debtor from arrest by his creditor. By the act of 1819, the 59 Geo. III. c. 49, for the resumption of payments in coin by the Bank, on the 21st of May, 1822, the Bank note, two years after, ceased to be a legal tender.

The 7 Geo. IV. c. 46, empowers the Bank of England to establish branch banks in any part of England for the issue of their notes, and it also allows copartnerships of *more than six* in number to carry on the banking business, at any place sixty-five miles from London; provided they have no establishment as bankers in London, nor do not issue, within the prescribed limits, any bills payable on demand, nor draw bills upon any partner, or person so resident, for less than 50*l*.

Bank notes, being payable on demand, cannot be recovered if lost by the legal owner, unless it can be brought home to the holder that they were obtained without a valuable consideration.

#### BANKERS' NOTES AND CHECKS.

Bankers' cash notes are promissory notes, payable to order, or bearer, on demand, and are transferable by delivery. They may, however, be negotiated by endorsement, in which case, the act of endorsing will convert them into a bill of exchange. On account of being payable on demand, they are considered *as cash*; but, if presented in due time, and dishonoured, they will not amount to payment. At present, cash notes are seldom

made, except by country bankers, their use having been superseded by the introduction of *checks*.

A *check*, or draft, is as negotiable as a bill of exchange, and vests in the assignee the same right of action against the assignor in default of payment.

With respect to the time within which a check should be presented for payment, it seems clear that, if payable on demand, it ought, if given in the place where it is made payable, to be presented the same day, or early next morning; unless by sickness or some other accident, which in all cases will excuse the neglect to make a presentment so soon as would otherwise be necessary. But, in point of law, there is no other settled rule than that the presentment must be made within a reasonable time, which, as observed by Lord Ellenborough, must be accommodated to other business and affairs of life, and the party is not bound to neglect every other transaction to present the check on the same day he receive it.

When the check is due on demand, and not payable at the place where received, it may be forwarded for payment by the next post.

Payment for a check before due is contrary to the usual course of business; and, therefore, when a banker paid a check a day before it bore date, which had been lost by the payee, he was liable to repay the amount to the loser, *Chitty, on Bills*, 127.

When payment on a bill is made by the drawee giving a draft on a banker, it is not advisable to give up the bill till the draft is paid. If the holder of a draft on a banker receive payment thereof in the banker's notes instead of cash, and the banker fail, the drawer of the check will be discharged.

## CHAP. VIII.

### *Award.*

AN award is the arbitration and judgment of one or more persons, at the request of two parties, who are at variance, for ending the matter in dispute without ap-

under certain circumstances, in order to be valid, to be in *writing*; but though written they still continue, like all other contracts not under seal, to be considered merely parol engagements.

The contracts mostly in use in commercial affairs are simple or parol contracts. The chief legal distinctions between simple contracts and contracts by speciality, or deed, it will be proper to explain.

1. In support of an action on simple contract, the creditor must prove it was founded on a *sufficient consideration*, but in a proceeding on a contract by deed, the want of consideration forms no defence to an action. 2. A creditor on simple contract has no remedy at law against the *real estate* of a deceased debtor, except when the debtor died a trader within the bankrupt laws (See page 211). 3. A deed is not affected by the Statute of Limitations, which renders any bill, note, or other simple contract, void at the expiration of six years. 4. The obligation of a deed can only be avoided by a release *under seal*, and not by parol. 5. And, lastly, as a special contract is considered a more deliberate and solemn engagement than by parol, the party bound thereby is not allowed to plead against any stipulation it contains, that it was executed with a different *intent* to what the terms of the deed itself import.

Having explained the different obligations of *simple* and *special* contracts, we shall next speak of the different subjects of sale and contract in the following order :

- I. *Sale and Purchase of Estates.*
- II. *Purchase and Sale of Goods.*
- III. *On Sale or Return.*
- IV. *Hiring and Borrowing.*
- V. *Warranty of Goods.*
- VI. *Bill of Sale.*
- VII. *Contracts to Marry.*
- VIII. *Avoidance of Contract.*
- IX. *Payment.*
- X. *Stamping of Contracts.*

#### I. SALE AND PURCHASE OF ESTATES.

As a general principle, the law affords no redress for

oversights committed in the purchase of estates, which might have been avoided by ordinary judgment and vigilance. But if the vender, knowingly, conceal *latent* defects, he cannot compel the execution of the contract, though the estate be sold expressly subject to all its faults.

A conveyance obtained for an inadequate consideration, from one not conscious of his right, by a person who had notice of such right, will be set aside, though no actual fraud is proved. But if there be no fraud in the transaction, mere inadequacy of price would not be deemed sufficient, even in equity, to vacate a contract, 10 *Ves.* 292.

From the moment of sale, the vendee becomes the virtual owner, and, consequently, from that time, entitled to any profit, or subject to any loss, which may subsequently accrue from the estate. And, on the other hand, the vender is entitled to *interest* on the purchase-money from the time of the bargain to that of payment, *Sug. Vend.* 479.

In trust estates, the purchaser is bound to see to the due application of the purchase-money, according to the terms of the trust, unless expressly released from that obligation by the terms of the trust.

Various persons are disqualified from the purchase of estates ; as trustees to preserve contingent remainders ; agents, commissioners of bankrupts, assignees of bankrupts, solicitors to the commission, auctioneers, and, lastly, creditors who have been consulted as to the mode of sale.

## II. PURCHASE AND SALE OF GOODS.

By the Statute of Frauds, 29 Car. II. c. 3, no contract for the sale of goods to the value of 10*l.* or upwards, is valid, unless the buyer actually receive part of the goods sold, or unless he give *something* by way of *earnest*, to bind the bargain, or in part of payment ; or unless some note or memorandum, in writing, be made and signed by the party, or his agent, who is to be charged with the contract.

With regard to goods *under* the value of 10*l.* no con



tract or agreement is binding unless the goods are to be delivered within a year, or unless the contract be made in writing, signed by the party or his agent.

Goods which cannot be delivered immediately are not within the statute, and are binding without writing ; as an agreement to take a carriage when it is built, a crop of grass when it is mown, or corn when it is threshed.

The delivery of a penny or a glove is sufficient *earnest* within the statute ; the acceptance of the key of the warehouse in which the goods are deposited ; the payment of warehouse-rent ; the directing them to be conveyed by a particular carrier ; or the re-sale of them to a third person ; are all an affirmation of the bargain.

The note or memorandum of a bargain for the price of 10*l.* or upwards, must state the *price* for which the goods were sold, 5. B. & C. 583. T. T. 1826.

Where no act remains to be done by the vender, as counting, weighing, or measuring, the moment the bargain is struck, the property of the goods is vested in the vendee, and remains at his risk. So, if a horse die in the *interval* of sale and delivery, the conditions of the statute having been complied with, the vender is entitled to his money, though no actual change of property has taken place.

In some cases, property may be transferred by sale, though the vender have none at all in the goods. The general rule of law is that all sales and contracts for any thing vendable, in fairs or open market, not only bind the parties, but all those having any right or property therein. Open market in the country is only held in certain towns, in a particular spot, and on special days, by charter or prescription. But, in London, every day, except Sunday, is market-day, and every shop in which goods are publicly exposed to sale is open market, for such goods only as the owner professes to trade in.

Pawnbrokers, in London, and within two miles thereof, are exempt from this protection ; and any goods wrongfully taken to them may be claimed by the owner.

## III. SALE OR RETURN.

When goods are sold upon *sale or return*, no absolute property is vested in the conditional vendee, and the sale of them, contrary to the price or terms agreed upon, subjects him to action. But though, while the goods remain unsold in the hands of such conditional vendee, no absolute property vests in him; yet, under the New Bankrupt Act, 6 Geo. IV. c. 16, s. 72, they would doubtless pass to the assignees as goods in his possession, order, or disposal; nor would any agreement between the parties protect the goods from the operation of the statute.

## IV. HIRING AND BORROWING.

These are, also, contracts by which a qualified property is transferred to the *hirer* or *borrower*; the difference is that *hiring* is always for a price or recompense; *borrowing* is merely gratuitous. In both cases the law is the same. They are both contracts whereby a transient property is transferred, for a particular time, or use, on condition to restore the goods so hired or borrowed, as soon as the time is expired, or use performed, together with the price or recompense (in case of hiring) either expressly stipulated or left to be implied by law, according to the value of the service. Thus, if a man hire or borrow a horse for a month, he has a qualified property therein during that period; on the expiration of which, his qualified property determines, and the owner becomes, in case of hiring, entitled to the price for which the horse was hired.

In all cases of hiring and borrowing, there is an implied condition that the thing hired or borrowed shall not be abused or improperly treated, so that it may be returned in as good condition as it was received.

## V. WARRANTY OF GOODS.

In all cases of *express* warranty, if the warranty prove false, or the goods are in any respect different from what the vender represents them to be, the buyer is entitled to compensation, or he may return them. But a *general* warranty does not extend to guard against defects which are obvious to ordinary circumspection, or where

the false representation of the vender is known to the vendee ; as if a horse with a *visible* defect be warranted perfect, or the like, the vendee has no remedy.

Neither does the law, upon a sale of goods by sample, with a warranty that the bulk of the commodity answers the sample raise an implied warranty that the commodity should be marketable ; therefore, if there be a latent defect then existing in them, *unknown* to the seller, and without fraud on his part, he is not answerable.

But a sale of goods by sample is such a warranty, that, if the bulk be inferior to the sample, the purchaser is not bound to accept or pay for the goods.

Warranty must be upon the sale ; if it be made after, it must be reduced to writing, otherwise, it will not be binding on the vender.

#### VI. BILL OF SALE.

This is a contract, under hand and seal, whereby a man transfers the interest he has in goods to another ; such an instrument is binding against the party who executes it, whether it were for valuable consideration or not ; but it may be fraudulent and void against creditors, and in some cases an act of bankruptcy.

When judgment has been obtained for any debt or damage, all contracts for the sale or purchase of goods, though *for a valuable consideration*, are void, from the delivery of the writ to the sheriff ; and those persons obtaining such judgment have a lien upon the property of him against whom it is given, so as to defeat any intermediate disposition of it between the delivery of the writ and the execution of the judgment.

A *bonâ fide* sale of goods in open market, to an innocent vendee, without notice of the execution, is not, however, subject to the lien of a third person, under the judgment.

So a bill of sale of goods made for a valuable consideration, with the knowledge and consent of the creditors, is valid against them, though unaccompanied with possession.

A bill of sale is sometimes given with a condition for resuming the goods at a certain period on re-payment

of the money advanced ; but it is a dangerous method of obtaining accommodation, and should be cautiously adopted.

#### VII. CONTRACTS TO MARRY.

If a man and woman, being unmarried, mutually promise to marry each other, but afterwards one of the parties marry another person, an action will lie for the breach of the contract.

If an infant and person of *full age* mutually promise to marry, the infant, though not bound by the promise, may, notwithstanding, maintain an action for breach of promise by the adult.

A promise by a man to pay a woman a sum of money if he shall marry any body else is considered as a *restraint of marriage*, and therefore void. So, in the case of *Hartley v. Rice*, which was an action upon a wagering contract for fifty guineas, that the plaintiff would not marry within six years ; this was held to be in restraint of marriage, and therefore void ; no circumstance appearing to show that such restraint was prudent and proper in the particular case.

The Statute of Frauds does not require that mutual promises to marry should be in writing. But a parol agreement to pay money, or make a settlement in *consideration of marriage*, if not reduced to writing, is void.

#### VIII. AVOIDANCE OF CONTRACT.

After bargain for the sale of goods, if the vendee does not come and pay for them, and take them away in a reasonable time after request, the vender may elect to consider the contract rescinded, and re-sell the goods.

Generally, if either vender or vendee neglect to fulfil the conditions of the sale, the other is at liberty to avoid the bargain.

A contract for the sale of goods may also be avoided by the *Statute of Limitations*, the 21 Jac. c. 16, which fixes the period of six years as the term beyond which a plaintiff cannot lay his cause of action. The general provisions of this act have been stated at page 35 ; we shall only here observe, the courts have manifested great

repugnance to a plea under this act, and it is held the statute does not extinguish the *right of action*, but only suspends the remedy, and this suspension is removed by a subsequent promise or engagement. Thus, if a person being asked, at the request of a creditor, in 1825, to pay a promissory note, dated 1815, and he promise so to do, this revives the obligation, *Tanner v. Smart*, K. B. Jan. 10, 1827. Not only is an express promise, but any acknowledgement of the existence of the debt, however slight, sufficient to take it out of the reach of the statute.

From the act, too, are excepted all persons under age, married women, persons insane, in prison, or abroad; and the limitations of the statute commence only from the time when their respective impediments or disabilities have been removed.

#### IX. PAYMENT.

In some branches of trade, custom has established a general usage as to the period of credit upon sales of goods, and, where no specific stipulation is made to the contrary, this customary credit is as much a part of the contract as if expressly agreed upon; the law implying that all persons deal according to the general usage, unless the contrary appear.

Where no such usage prevails, and no time of payment is specified in the contract of sale, the money is demandable immediately upon the delivery of the goods.

If the vender stipulates to deliver certain goods within a limited time, he cannot demand payment till the *whole* of the goods are delivered.

With respect to *interest*, it is determined that interest is not allowable on a demand for goods sold and delivered, unless where there is a specific agreement for that purpose, as by bill of exchange, promissory note, or an express promise to pay interest; then the vender is entitled to interest from the time specified.

So when, from the usage of a particular trade, the intention of the parties, that a book-debt shall bear interest, can be collected, interest will be allowed.

## X. STAMPING OF CONTRACTS.

A written instrument which requires a stamp cannot be admitted in evidence unless it be *duly stamped*; and no parol evidence will be received of its contents. If, therefore, the instrument produced is the only *legal* proof of the transaction, and that cannot be admitted for want of a proper stamp, the transaction cannot be proved at all. But it may happen, in a variety of cases, that the transaction is capable of being proved by other evidence, beside the written instrument; and the objection arising from the stamp acts may be avoided by resorting to that other species of proof.

It appears, however, from a late decision in the Exchequer, that a *deed* may be valid without a stamp of the proper denomination, provided it has a stamp proportioned to the consideration *expressed* in the deed; and though that consideration prove not to be the true one, 13 *Price*, 455, *E. T.* 1824. But, on the other hand, by 48 Geo. III. c. 14, s. 22, persons are liable to a heavy penalty in not setting forth the *full* purchase or consideration money.

## CHAP. X.

*Assumpsit.*

ASSUMPSIT, from the Latin *assumo*, is an *implied* contract, by which a man assumes or takes upon him to perform or pay any thing to another, and to which he is bound upon the principles of equity and the just construction of law.

1. If I employ a person to transact any business for me, or perform any work, the law implies that I undertook or assumed to pay him so much as his labour deserved. And if I neglect to make him amends, he has a remedy for this injury, by bringing his action on the case; in which he is at liberty to suggest that I promised to pay him so much as he reasonably deserved, and then to aver that his trouble was really worth such a sum, which valuation is submitted to the determination of a jury.

2. If one take up goods or wares of a tradesman,

without expressly agreeing for the price, there is an implied understanding that the real value of the goods shall be paid, and an action may be brought accordingly.

3. Another implied undertaking is when one has received money belonging to another, without a consideration given on the receiver's part; for the law construes the money received for the use of the owner only, and implies that the person so receiving it undertook to account for it to the owner. And if he unjustly detain it, an action lies against him, and damages may be recovered. This is an extensive and beneficial remedy, applicable almost to every case where a defendant has received what, in equity and fairness, he ought to refund. It lies for money paid by mistake, or on a consideration which happens to fail, or through imposition, extortion, or oppression, or where any undue advantage is taken of the plaintiff's situation.

4. When a person has laid out and expended his own money for the use of another, at his request, the law implies a promise of re-payment, and an action will lie on this undertaking. On this principle, it is established that a surety in a bond, who pays the debt of his principal, may recover it by action on the assumpsit, for so much advanced for the use of the principal. But an action will not lie for money paid, when the money has been paid *against the express* consent of the party for whose use it is supposed to have been paid, *Stokes v. Lewis*, Pratt's Dig. 86.

5. Upon a stated account between two merchants or other persons, the law implies that he against whom the balance appears has engaged to pay it to the other, though there be not any actual promise. Actions, however, to compel a person to bring in and settle his account are now seldom used; the most effectual way to settle these matters is to file a bill in equity, when a discovery may be had on the *defendant's oath*, without relying merely on the evidence which the plaintiff may be able to produce; though, when an account is once settled, nothing is more common than an action on the assumpsit to pay the balance.

6. The last class of implied contracts arise upon the

supposition that every one who undertakes any office, employment, trust, or duty, contracts, with those who employ or entrust him, to perform it with integrity, diligence, and skill. And if, by the want of either of these qualities, any injury accrue to individuals, they have their remedy and damages by a special action on the case. A few instances will suffice.

If a public officer be guilty of neglect of duty, or a sheriff or jailer suffer a prisoner in custody for debt to escape, or if an attorney betray or wilfully neglect the cause of his client, he is liable for damages.

With an innkeeper, there is an implied contract to secure his guest's goods in his inn; with a common carrier, to be answerable for the goods he carries; with a common farrier, that he shoes a horse well without laming him; with a tailor, shoemaker, or other workman, that he performs his business in a workmanlike manner; in which, if they fail, an action on the case lies to recover damages for such breach of their general undertakings. So, too, a surveyor being employed to survey and value premises, upon the security of which money is about to be advanced; if he, through ignorance or negligence, represent the value of the security greater than it is, by which his employer is deceived, he is liable to an action for damages, *Boulter v. Mason*, Common Pleas, July 17th, 1827.

But if a person be employed to perform any of these offices, whose common profession or business it is not, the law implies no such general undertaking: in order to charge him with damages, a special agreement is necessary.

If any one cheat me with false cards or dice, or by false weights and measure, or by selling me one commodity for another, an action lies for damages, upon the contract, which the law implies that every transaction is fair and honest.

In contracts, likewise in sales, it is constantly understood that the seller undertakes that the commodity is his own. In contracts for provisions, it is implied that they are *wholesome*; otherwise, in either case, an action lies for damages.



## CHAP. XI.

*Insurance.*

INSURANCE is defined, by Marshall, a contract whereby one party, in consideration of a stipulated sum, undertakes to indemnify the other against certain perils or risks to which he is exposed, or against the happening of some event. The party who takes upon him the risk is called the *insurer*, sometimes the *underwriter*, from subscribing his name at the foot of the policy; the party protected by the insurance is called the *insured*; the sum paid to the insurer, as the price of the risk, is called the *premium*; and the written instrument, in which the contract is set forth and reduced into form, is called a *policy of insurance*.

A policy may be either *valued* or *open*; in the former, the property insured is valued and specified; in the latter it is not mentioned. In an open policy, the real value must be proved, in the other it is settled.

Policies are usually effected by the intervention of a broker; they must be duly stamped; and, being considered a simple contract, must be construed as nearly as possible according to the *intentions* of the contracting parties, and not according to the strict meaning of the words. The least shadow of fraud entirely vitiates the instrument: both parties are bound to disclose all circumstances within their knowledge; any concealment of facts, false statement, or misrepresentation, at the time of making the contract, cancels the policy.

Insurance is of different kinds; as of ships and goods against risk at sea; of the lives of individuals; and of houses, buildings, and other property against fire. The subject may be distributed as follows:—

- I. *Marine Insurance.*
- II. *Wager Policies.*
- III. *Bottomry and Respondentia.*
- IV. *Insurance against Fire.*
- V. *Insurance of Lives.*
- VI. *Annuities for Lives.*

## I. MARINE INSURANCE.

By the 6 Geo. I. c. 18, the Royal Exchange Assu-

rance Company and the London Assurance Company had the exclusive privilege of underwriting policies of *marine* insurance, and all undertakings by other persons were declared void. But, by an act in the session of 1824, the 5 Geo. IV. c. 114, so much of the 6 Geo. I. is repealed as to allow any other corporation, or any persons in partnership, to grant policies of insurance on ships or goods at sea, and also to make contracts of bottomry.

In a marine insurance, if a man warrant to sail on a particular day, and fail to do so, the underwriter is no longer liable. So, if the warranty be to sail after a specific day, and the ship sail *before*, the policy is equally vacated.

If the insured warrant the vessel to sail with *convoy*, and it do not, the policy is void. But if the insured warrant the property on board to be *neutral* property, and it is not, then the contract is not merely voided, as for a breach, but it is absolutely void from the commencement, on account of the fraudulent concealment of a known fact.

The changing of a ship, or, as it is commonly called, the *bottom*, is a bar to the insured recovering upon a policy of insurance against the underwriter: or a deviation from the usual and regular course of the voyage equally discharges the insurer from liability.

It has also been determined that every ship insured must, at the time of the insurance, be able to perform the voyage, unless some external accident should happen; for, if she have a *latent* defect, even wholly unknown to the parties, that will vacate the policy, and the underwriter is discharged.

Insurance made on a voyage, prohibited by the laws of the country, or to cover any trading with the enemy, or to protect the importation or exportation of commodities declared to be illegal, are all void, and the insured cannot recover the premium.

Nor in any case can a premium once paid upon an *illegal* insurance be recovered back.

## II. WAGER POLICIES.

Contracts of insurance are protected and encouraged by the laws with a view of distributing the loss or gain

among a number of adventurers, so that no unforeseen calamity may plunge any single individual or party into irretrievable ruin. But a practice obtained of insuring large sums without having any property on board, or interest at stake, which were called insurances, *interest or no interest*; and also of insuring the same goods several times over; both of which were a species of gambling, without any advantage to commerce, and were denominated *wager policies*.

To prevent such fictitious, or gambling transactions, the 19 Geo. II. c. 37, provides that all insurances, interest or no interest, or without further proof of interest than the policy itself, or by way of gaming, or wagering, or without benefit of salvage to the insurer, shall be null and void; and that no re-assurance, or double-assurance, shall be lawful, except the former insurer shall be insolvent, a bankrupt, or dead; and, lastly, in the East-India trade, the lender of money on bottomry, or at *respondentia*, shall, alone, have a right to be insured for the money lent, and the borrower shall, in case of a loss, recover no more than his absolute share in the ship or merchandize.

The statute does not extend to *foreign* ships; upon which there may still be insurances, interest or no interest; these were not included in the act, from the difficulty of bringing witnesses from abroad to prove the interest.

### . III. BOTTOMRY AND RESPONDENTIA.

Bottomry is in the nature of a mortgage of a ship, when the owner borrows money to enable him to proceed on his voyage, and pledges the keel or *bottom* of the ship as security for the re-payment. In the contract, it is understood, if the ship be lost, the lender loses his whole money; but, if it return in safety, then he shall receive back his principal, and also the premium or interest agreed upon, however it may exceed the legal rate of interest. If the ship and tackle be brought home, they are answerable for the money lent, as well as the *person* of the borrower. But, if the loan is not upon the vessel, but upon the goods and merchandize, which must be necessarily sold or exchanged

in the course of the voyage, then only the borrower, personally, is bound to answer the contract; who therefore, in this case, is said to raise money at *respondentia*.

In this consists the difference between *bottomry* and *respondentia*; the one is a loan upon the ship, the other a loan upon the goods. In the former case, the lender runs no risk, though the goods should be lost; in the latter, the lender is entitled to principal and interest though the ship be lost, provided the goods are safe.

The amount of the loan on *bottomry* or *respondentia*, in England, is not restrained by any law whatever, though it is, in many maritime states, by express regulation: the only restriction in England is that already mentioned, with respect to money lent on ships and goods going to the East Indies, which must not exceed the value of the property on which the loan is made.

The *bottomry* and *respondentia* bonds usually express the nature of the risks to which the lender is liable, and are nearly the same against which the underwriter, in a policy of insurance, undertakes to indemnify. These risks are tempests, fire, capture, and every other casualty, except such as arise either from defects in the ship or merchandize, on which the loan is made, or from the misconduct of the borrower.

The *respondentia* interest is frequently at the rate of 40 or 50 per cent. or in proportion to the risk and profit of the voyage. The *respondentia* lender may *insure* his interest in the success of the voyage, but it must be expressly specified in the policy to be *respondentia* interest; unless there is a particular usage to the contrary, *Park on Insurance*, 11.

#### IV. INSURANCE AGAINST FIRE.

By a contract of insurance against fire, the insurer, in consideration of a certain premium received by him, either in a gross sum or by annual payments, undertakes to indemnify the insured against all loss or damage which he may sustain in his house, or other buildings, stock, goods, and merchandize, by fire, during a limited period of time.

Some of the companies for insuring against fire have

been established by royal charter, others by deed enrolled ; and others give security upon land for the payment of losses. The rules by which they are governed are created by the managers, and a copy given to every person at the time he insures ; so that by his acquiescence he submits to their proposals, and is fully apprised of the terms, by a compliance with which he will be entitled to indemnity.

Policies of insurance against fire are not assignable ; nor can the interest in them be transferred from one person to another without the consent of the insurers. But, when a person dies, the policy and interest therein continue to the parties to whom the property belongs, provided, before any new payment be made, they procure their names to be endorsed at the insurance office, or the premium to be paid in their names.

In the body of the policy, the insurers acknowledge the receipt of the premium at the time of making the insurance ; and, by the printed proposals, it is stipulated that no insurance shall take place till the premium be actually paid by the insured or their agents. The Royal Exchange Assurance Company, the Phoenix, and some others, however, allow fifteen days for the payment of the insurance upon annual policies, and all other policies of a longer period. But policies for a shorter period than a year cease at six o'clock on the evening of the day mentioned in the policy.

When a fire happens, notice should be immediately given to the office, and, as soon as possible after, or within a limited time, according to some regulations, an account given, upon oath or affirmation, of the loss sustained, supported by books of account, or such other vouchers as may be required or may be in existence. It is also required by some offices to procure a certificate, signed by the minister and churchwardens, together with some respectable inhabitants of the parish, not concerned in the loss, importing that they are well acquainted with the character and circumstances of the parties, and that they know or believe they have suffered the damage alleged.

To whatever amount persons insure they can only re-

cover to the amount of the loss actually sustained ; for to be otherwise would obviously open a door to fraud and collusion.

Most offices consider themselves liable to *partial* losses ; and the printed conditions of some of them undertake to allow all reasonable charges attending the removal of goods in case of fire, and to pay the sufferer's loss where the goods are destroyed, lost, or damaged by such removal.

#### V. INSURANCE OF LIVES.

The insurance of a life is a contract whereby the insurer, in consideration of a certain premium, either in a gross sum or periodical payments, proportioned to the age, health, profession, and other circumstances of the person whose life is insured, undertakes to pay the person for whose benefit the insurance is made a stipulated sum, or an equivalent annuity, upon the death of the person whose life is insured, whenever this event shall happen, if the insurance shall be for the *whole* life, or in case this shall happen within a certain period, if the insurance be for a *limited* time.

The chief utility of this kind of insurance is in making a provision for a family, or others, whose dependence is on the life of an individual. Persons having incomes determinable upon their own lives, or the lives of others, arising from landed property, from professions, from church livings, from public employments, pensions, annuities, &c. by paying such an annual premium as they can spare from their present necessities, may secure to their widows, their children, or other dependents, an adequate sum of money, or an equivalent annuity, payable upon their deaths.

It is also resorted to by those who are desirous of raising a loan, for which the chance of re-payment depends on the life of the borrower. Thus, if A lend 100*l.* to B, who can give nothing but his personal security, in order to secure A in case of his death, B applies to C, an insurer, to insure his life in favour of A, by which means, if B die within the time limited in the policy, A will have a demand upon C for the amount of the insurance.

The same rules and observations which apply to insurance in general, and which we have noticed more particularly under the head of Marine Insurance, apply to insurance upon lives ; the same mode of construing the policy is to be adopted ; fraud will equally vacate one as the other ; and the same attention must be paid to all warranties with regard to health, age, profession, &c.

Where there is an express warranty that the person is in *good health*, it is sufficient that he is free from any existing ailment ; for it can never mean that he is free from the seeds of disease. Even if the insured labour under a particular infirmity, if it can be proved, by medical men, that it did not at all, in their judgment, contribute to his death, the warranty of health has been fully complied with, and the underwriter is liable.

With respect to the risk which the underwriter is to run, it is usually inserted in the policy, and includes all those accidents to which human life is exposed, except suicide, or death by the hand of justice. When the risk is once began, there can be no apportionment or return of premium. So, if a person whose life is insured were to put an end to it next day, or should be executed, there would be no return of premium, though the underwriter is discharged.

To prevent gambling transactions in insurance upon lives, it is declared, by 14 Geo. III. c. 48, that every insurance is void made upon life, or other event, wherein the person for whose benefit, or on whose account such insurance is granted shall have *no interest*. It is further provided that the name of the person interested shall be inserted in the policy ; and, in all cases where the insured has an interest on such life, or event, no greater sum shall be recovered or received from the insurer than the amount or value of the interest insured.

#### VI. ANNUITIES FOR LIVES.

Annuity is a yearly payment of a certain sum of money for life, or a term of years ; if payable out of lands it is properly called a *rent-charge* ; but if both the person and estate be made liable, as they most commonly are, then it is called an annuity. It arises fre-

quently out of the same necessity as an insurance on life, the inability of the borrower to give the lender a permanent security for the return of the money borrowed; he, therefore, stipulates to pay, during his life, an annual sum proportioned to the loan advanced, and the contingency of the borrower's death.

The grantee of an annuity usually insures the life of the grantor, and will not advance the money till he is certain some insurance office will insure the life, and he usually adds the amount of the annual insurance to the annual interest, and makes the grantor pay *both* in one entire sum of, perhaps, *15l. per cent.*; so that, in truth, the grantee is, out of the pocket of the grantor, indemnified from all risk, and clears an eleven or twelve per cent. To throw some check upon improvident transactions of this kind, which are usually carried on with privacy, various acts of parliament have been passed.

By the 53 Geo. III. c. 141, every annuity, or rent-charge, granted for life, or a term of years, is to be enrolled in the Court of Chancery thirty days before the execution thereof, and the date, the *names* of the witnesses, and of the parties beneficially interested therein, are to be stated in the deed, bond, or instrument.

Contracts for annuities by persons under age are declared void; and persons soliciting such, or obtaining their promise, or word of honour, not to plead infancy, or otherwise, against the demand of any such annuity, or rent-charge, are guilty of a misdemeanor. So are solicitors, brokers, or others, acting between the parties, who demand or accept, in money or any other gratuity, more than *10s. per cent.*

This act does not extend to Scotland or Ireland, nor to annuities granted by will, or by marriage-settlement, or for the advancement of a minor. The act is explained by 3 Geo. IV. c. 92, which provides that the names, without the address, of the witnesses, in an annuity-deed, are sufficient in the memorial; also, that every deed duly enrolled is valid, notwithstanding the omission to enrol any other deed or security relating to the same annuity.



To remove doubts which had arisen on the validity of enrolments under 53 Geo. III. wherein only the initial or abbreviation of the Christian name had been inserted in the memorial, the 7 Geo. IV. c. 75, enacts that no *other* signature of names shall be required in the memorial than appear in the annuity-deed.

## CHAP. XII.

### *Deed—Assignment—Debt—Covenant—Promise.*

#### I. DEED.

A DEED is an instrument, in writing, on parchment, or paper, sealed and delivered by the parties. It may be written in any hand, or in any language; and, if it be made by more parties than one, there ought to be as many copies of it as there are parties, and each should be cut or indented at the margin, to tally or correspond with the other: which deed so made is called an *indenture*. A deed made by one party only is not indented, but polled, or cut even, and, therefore, called a *poll deed*, or a single deed.

It is not absolutely necessary a deed should be *indented*; and, by 31 Geo. II. c. 11, the omission of indenting does not lose an apprentice his parish settlement.

It seems that there are seven things necessary to a valid deed. 1. The parties must be able to contract, and there must be a subject to contract for; all which must be expressed by sufficient names.

2. The deed must be founded upon good and sufficient consideration, not upon fraud or collusion to deceive purchasers, or just and lawful creditors. But, in this case, though the deed will be void, as against *bonâ fide* purchasers and lawful creditors, it will not be void as between the parties themselves, that is, the grantor or grantee cannot vacate his own act.

3. The deed must be *written*, or *printed*, and on a stamp, otherwise it cannot be given in evidence.

4. The matter of the writing must be legally, orderly, and intelligibly set forth.

5. The deed must be *read* to any of the parties, if required. If read falsely, it is void; and, if any of the parties cannot read, it must be read to him.

6. It must be *sealed* and *signed*: though it seems sealing and delivering without signing is sufficient; unless in cases under the Statute of Frauds, and deeds executed under powers, 6 *Madd.* 166.

7. The last requisite to a deed is the *attestation*, or execution of it, in presence of witnesses; though this is necessary rather for preserving the evidence than for constituting an essential part of the deed.

Bad grammar will not make a deed void; but rasure or interlineation, in a material part, will have that effect, unless some memorandum thereof be made on the back of the deed, testifying that it was done before sealing; and if words are blotted out in a deed by a grantee or lessee himself, after execution, although it be not in a place material, it will make the deed void.

When the seal has been affixed and afterwards broken off, or defaced by accident, the deed is still valid. If, however, a person to whom another is bound *intentionally* break off the seal, it destroys the instrument, but not so if the party who is bound break off the seal.

It is not essential to the validity of a deed it should be *dated*; when no date is inserted, the time will be reckoned from the delivery, 2 *Raym.* 1076.

## II. ASSIGNMENT.

An *assignment* is the transferring and setting over to another some right, title, or interest.

A possibility, right of entry, title for condition broken, a trust, or thing in action, or cause of suit, cannot be granted or assigned over.

An office of trust is not assignable, neither is a personal trust, or trusteeship, or executorship, assignable.

*Arrears* of rent, and the like, as things in action, are not assignable.

Several things are assignable by custom, or act of parliament, which seem not assignable in their own

nature; as promissory notes, bills of exchange, bail-bonds by the sheriff, and the effects of a bankrupt.

An assignment for the benefit of creditors is generally of the whole of the debtor's property, which assignment the creditors accept in lieu of their respective claims. Unless, however, all the creditors assent, such assignment is a fraud on the bankrupt laws by disabling an insolvent from carrying on business; and, by 6 Geo. IV. c. 16, an assignment of *all* the estate for the benefit of *all* the creditors is an act of bankruptcy, if a commission shall issue within six months from the execution of such assignment.

An assignment by joint-traders must have the assent of all the separate creditors, as well as the joint-creditors, or the assignment will be void, as to the separate creditors who may not assent.

If a person, after assigning his property, embezzle any portion, he is disqualified from deriving any benefit from such assignment.

### III. DEBT.

The legal acceptation of *debt* is a sum of money due by certain and express agreement from one person to another, and for the recovery of which the proper remedy is either by *action of debt* or *special action* on the case.

If I agree with a tailor, for a *certain* price, to make me a suit of clothes, and fail to pay him, an *action of debt* lies against me; but if I agree for no fixed price, I am not liable to an action of debt, but a *special action* on the case.

When Sir W. Blackstone wrote, actions of debt were seldom brought but upon special contract, that is, upon bond, deed, covenant, or other instrument under seal; for, in case of such action upon simple contract, the plaintiff laboured under two difficulties; first, the defendant might *wager his law*, or clear himself of the debt by oath, if he thought proper; secondly, the plaintiff had to prove the *whole* debt he claimed, or recover nothing at all.

But it is now settled (and it occurs in every day's practice) that the plaintiff may prove, and recover *less* than the sum demanded. This, and the circumstance that the judgment is final, in the first instance, as well as that the wager of law has fallen into disuse, have made the action on simple contract, as well as specialty, of very frequent use.

## IV. COVENANT.

A *covenant* is the agreement of two or more persons to do or omit some specified act, and is created by deed, in writing, sealed and executed by the parties.

If a man covenant to be at London on a particular day, and is not at London by the time appointed, this is a breach of covenant, for which an action will lie. So, if a man, for a valuable consideration, agree that he will not exercise his trade or profession within a particular place, he is bound by it: but an obligation which binds a person to a total restraint of trade, whether for a limited time or generally, is unlawful and void.

A covenant must be to do what is *lawful*, or it will not be binding; and if the thing to be done be impossible, the covenant is void.

In deeds and articles of covenant, sometimes, a clause for performance with a penalty is inserted; and, at other times, and more frequently, bonds are given for the performance, with a sufficient penalty, separate from the deed: which last being sued, the jury must find the penalty; but, on covenant, the damages only.

If a man covenant with one to pay him money on a time to come, and the covenantee die before the day, his executors have an action of covenant for the money. Also, in every case where a testator is bound by a covenant the executor is liable, if it be not determined by the testator's death; but there may be a covenant only to be performed by the parties themselves.

The common use of covenants is for assuring quiet enjoyment of land, for payment of rent reserved, and concerning repairs, damages, and accidents. They are generally taken most strongly against the covenantor, and for the covenantee.

## V. PROMISE.

A *promise* is of the nature of a verbal covenant, and, when made upon sufficient consideration, wants only the formality of writing and sealing to be absolutely the same. The legal remedy, however, for non-performance is different; since, instead of an action of covenant, there only lies an action on the case for the assumpsit, or undertaking of the defendant; the failure of performing which is the wrong or injury done to the plaintiff, the damages whereof a jury are to estimate and determine.

The Statute of Frauds enacts that, in the five following cases, no verbal promise shall be sufficient to ground an action upon, without, at the least, some note or memorandum of it shall be made in *writing*, and signed by the party to be charged therewith, or some other person lawfully authorized by him.

1. Where an executor or an administrator promises to answer damages out of his own estate.

2. Where a man undertakes to answer for the debt, default, or miscarriage of another. And in this case even a written undertaking is void, unless a good consideration appear in the writing, and this consideration cannot be proved by parol evidence, *Wain v. Walters*, 5 E. R. 10.

3. Where any agreement is made upon consideration of marriage.

4. Where any contract or sale is made of lands, tenements, hereditaments, or any interest therein.

5. And, lastly, where there is any agreement that is not to be performed within a year from the making thereof.

Though the Statute imposes the necessity of writing, it does not thereby waive any of the prior requisites to make a valid promise; as, for example, the want of a valuable consideration.

The Statute requires the "agreement, or some memorandum, or note thereof," to be put in writing; this means not merely the bare promise, but the *terms* of the contract and consideration.

The third clause does not include *mutual* promises to marry; it relates only to agreements to pay marriage-portions, make settlements, or to do other acts in consideration of marriage.

If a promise depend upon a contingency, which may or may not fall within a year, it is not within the Statute: as a promise to pay a sum of money upon a death, or marriage, or upon the return of a ship, or to leave a legacy by will, is good by parol; for such a promise may, by possibility, be performed within the year.

A court of equity will decree a specific performance of a verbal contract when it is confessed by a defendant in his answer, or when there has been part performance of it, as by payment of part of the consideration money; for such acts preclude the party from denying the existence of the contract, and prove that there can be no *fraud* or perjury in compelling the execution of it. But Lord Eldon thought that a specific performance cannot be decreed if the defendant, in his answer, admit a parol agreement, and, at the same time, insist upon the benefit of the Statute, 6 *Ves. Jun.* 37.

If one party only sign an agreement, he is bound by it; and, if an agreement be by parol, but it is agreed it shall be reduced into writing, and this is prevented by the fraud of one of the parties, performance of it will be decreed.

When a man is under a moral obligation, as a minor to pay the debts contracted in his minority; or a debt protected by the Statute of Limitations; or a bankrupt in affluent circumstances promises to pay his debts in full, the honesty and rectitude of the thing, in these cases, is deemed a sufficient consideration.

## CHAP. XIII.

### *Liens.*

A LIEN may be defined a right which one person has to detain the property of another on account of labour expended on that property, or for the general balance of an account due from the owner.

As the common law imposes on certain trades, as inn-keepers and carriers, the obligation of accepting all employment offered within the limits of their occupation, so, in return for this obligation, it entitles the party to a particular lien on the property, as a remuneration for the trouble and expense incurred in the execution of the purpose for which such property was intrusted.

But the general opinion appears to be that the right of lien is not confined to those trades which are under an obligation to accept employment from all who offer it; but that the remedy by detention extends to every trade exercised for the benefit and advantage of the community.

Attorneys and solicitors have a lien for their costs on the papers of their clients; bankers, upon all securities in the way of trade; brokers, factors, and agents, on the property of their principals in possession, or even in the hands of purchasers; masters of vessels, on their cargoes, for wages, or necessary repairs, during the voyage; carriers have a lien for the carriage-price; inn-keepers on the goods and persons of their guests, for their food and lodging, and on their horses, for their keep and stabling; insurance-brokers have a lien for the general balance of their account on the policies effected by them for their principals; lastly, millers, packers, wharfingers, dyers, coach-makers, calico-printers, and others, have all a lien on the goods respectively confided to them in the way of business.

The right of lien cannot be exercised under the following circumstances: 1. If the possession of property has been obtained wrongfully or by misrepresentation. 2. If it has been intrusted solely on the *personal* credit of the owner of the lien, or delivered by an authorized servant or agent. 3. And, lastly, no lien can be acquired over property delivered by a bankrupt, or one in contemplation of insolvency.

It is, also, material to remark that if the holder of goods once voluntarily part with the possession of them, he afterwards loses all right of lien upon them.

## CHAP. XIV.

*Bankruptcy.*

**BANKRUPT** (*bankus ruptus*) is so called, probably, because when the bank or stock is broken or exhausted, the owner is said to be a bankrupt. By Sir William Blackstone, a bankrupt is defined “a trader who secretes himself, or does certain other acts tending to defraud his creditors.”

In the ordinary course of law, creditors may seize either the person or the effects of their debtor, but they cannot take both at the same time; and if they take the body in execution they cannot afterwards resort to the effects. All the creditors must run through all the same process to recover their several debts. By the Bankrupt Laws, on the contrary, a form of proceeding, upon principles equally rational and humane, is allowed at the instance of one or more of a man's creditors, at the common expense, and for the common benefit of them all. The debtor is at once, by operation of law, divested of all his property, real and personal, which is transferred to trustees chosen by his creditors. But if the debtor make a full discovery, and appear to have acted without fraud, he then becomes entitled to a complete discharge, both of his person and of any property he may afterwards acquire; and also to a reasonable allowance out of his former effects, proportioned to his good conduct, and the amount of the dividend which his estate pays to his creditors.

The acts of parliament relative to bankrupts, before the reform in the Bankrupt Laws, amounted to upwards of twenty; by the act of the Session of 1825, the 6 Geo. IV. c. 16, nearly the whole of these statutes, commencing with the 33 & 34 Henry VIII. down to the 5 Geo. IV. c. 98, are repealed, and their various provisions amended, simplified, and consolidated into one general law.

In the *New Bankrupt Act* several additional acts of bankruptcy are introduced; it also allows the proof of



various debts, which were before not permitted; such as contingent debts, costs, interest on promissory notes, by sureties for annuities; and peculiar indulgencies are given to clerks, servants, and apprentices. All payments whatever, either by or to the bankrupt, without notice of an act of bankruptcy, are protected down to the date of the commission: and, even with notice, purchases for a valuable consideration shall not be impeached, unless a commission issue within twelve months after such act of bankruptcy. The important principle that a trader who finds himself in insolvent circumstances may publicly declare it, and take such steps as may secure the distribution of his estate amongst his creditors, has been now first adopted. All debts are allowed to carry interest, in the event of a surplus, according to certain priorities; and, under a *second* commission, future effects are vested in the assignees, until 15*s.* in the pound be paid: and, finally, an important provision has been made, termed the *composition contract*, by which, if a composition, or security for a composition, be offered, which is approved by two meetings of creditors, and by a majority of nine-tenths, in value, of the creditors at each of such meetings, the Lord Chancellor is directed to supersede the commission.

Having shortly stated the amendments introduced into the new act, we shall next briefly exhibit, under separate heads, the present state of the Bankrupt Laws; advert~~ing~~ing in our progress to those acts, and also the decisions and the practice of the courts, not affected by the 6 Geo. IV. c. 16.

- I. *Persons liable to be made Bankrupts.*
- II. *Acts constituting Bankruptcy.*
- III. *Declaration of Insolvency.*
- IV. *Liability of Members of Parliament.*
- V. *The Petitioning Creditor.*
- VI. *Auxiliary Commission.*
- VII. *Powers and Duties of the Commissioners.*
- VIII. *Debts proveable under the Commission.*
- IX. *The Assignees.*
- X. *Property liable under a Bankruptcy.*

- XI. *Acts valid with or by a Bankrupt.*
- XII. *Payment of the Dividend.*
- XIII. *Surrender and Examination of the Bankrupt.*
- XIV. *The Certificate.*
- XV. *Allowance to the Bankrupt.*
- XVI. *Composition with the Bankrupt.*
- XVII. *Record of Proceedings.*
- XVIII. *Lord Chancellors' Orders.*
- XIX. *Jurisdiction of the Bankrupt Laws.*

#### I. PERSONS LIABLE TO BE MADE BANKRUPTS.

Bankers, brokers, scriveners, ship-insurers, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels, or coffee-houses; dyers, printers, bleachers, fullers, calenders, cattle or sheep salesmen, factors, agents, and all persons who use the trade of merchandize by bargaining, bartering, commission, consignment, and otherwise; and all persons who seek their living by buying and selling, letting for hire, or by the manufacturing of goods and commodities, are liable to be made bankrupts. Persons not liable, are farmers, graziers, labourers, workmen for hire, receiver-general of taxes, and members or subscribers to any commercial or trading company, established by charter or act of parliament.

A *clergyman*, if a trader, may be made a bankrupt; or a dealer in smuggled goods; or an executor, or trustee, trading for the benefit of another; but not an infant, nor a lunatic, nor a married woman, unless she be a *sole* trader according to the *custom of London*, or according to articles of separation, or the husband be transported, *ex parte Maymot*, 1 *Atk.* 199; 1 *T. R.* 5.

An attorney, in the common course of his profession, cannot be made a bankrupt. Nor the proprietor of a coal-mine, selling coals; or of a stone-quarry, selling stones; nor a brick-maker selling bricks made in his own field. Neither can any public officer, in respect of his office, be made a bankrupt; nor one who buys or sells under particular restraint, as a *schoolmaster* who

buys books to sell to his scholars, or a contractor for victualling the army.

A single act of buying or selling is not sufficient to bring a person under the Bankrupt Laws; whether a man be a trader, within the statutes, is a question, not of *fact*, but of *law* upon the fact, *Cowp.* 572. A trading, to support a commission, depends not upon the quantity but the *intention*; and it is a question for a jury whether there be enough to evidence that intention.

By 9 Ann, c. 12, no trader within the Bankrupt Laws is exempt therefrom, by placing himself in the service of an ambassador or public minister.

## II. ACTS WHICH CONSTITUTE BANKRUPTCY.

Generally, any act *intended* to delay or defraud creditors is an act of bankruptcy: such as a trader leaving the country, concealing himself from his creditors, causing himself to be arrested, or his goods and chattels attached, or taken in execution, making any fraudulent conveyance, gift, or delivery of lands, tenements, or chattels, with intent to defraud his creditors.

The 3 Geo. IV. c. 39, *to prevent Frauds upon Creditors, by secret Warrants of Attorney to confess Judgment*, enacts that, when a commission of bankruptcy shall issue against a person giving a warrant of attorney, within twenty-one days next after the execution of such warrant of attorney, such warrant of attorney shall be deemed fraudulent and void against the assignees, unless the warrant of attorney, or copy thereof, shall have been filed within twenty-one days next after the execution thereof, in the Court of King's Bench, together with an affidavit of the time of execution.

A trader, making an assignment, by deed, of *all* his estate and effects, for the benefit of *all* his creditors, is not an act of bankruptcy, unless a commission issue against such trader within six calendar months from the execution of such assignment; provided that the assignment is attested by an attorney or solicitor, and executed within fifteen days, and that notice of such assignment be given, within two months, in the *London*

*Gazette*, and two London daily newspapers, if the trader reside within fifty miles of London ; and, if not, notice must be given in the *Gazette* and the nearest provincial newspaper.

Traders held in prison for debt for the period of twenty-one days, or, being arrested, make their escape out of prison or custody, commit acts of bankruptcy : but in the first case it must be a *lawful* arrest and commitment for debt.

A trader beginning to *keep house*, by denying himself to a creditor, when at home, is an act of bankruptcy. But not if the denial be on Sunday, nor at eleven o'clock at night, nor if done to avoid interruption at dinner time, *Smith v. Currie*, 1 Rose, 364.

Lastly, by the Insolvent Act, 7 Geo. IV. c. 57, the filing of a petition, in order to take the benefit of that statute, is an act of bankruptcy ; and if a commission be issued before the time appointed by the Insolvent Court for hearing the petition, or any time within two calendar months from the filing thereof, such commission makes void any assignment made in pursuance of the insolvent law.

### III. DECLARATION OF INSOLVENCY.

If any trader file a declaration in the Office of the Secretary of Bankrupts, stating that he is insolvent, or unable to meet his engagements, such declaration shall, after advertisement in the *Gazette*, be deemed an act of bankruptcy. But no commission shall issue thereupon, unless it be sued out within two calendar months next after the insertion of such advertisement ; and unless such advertisement shall have been inserted in the *Gazette* within eight days after such declaration was filed ; and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after the insertion of such advertisement, in case such commission is to be executed in London ; or before eight days after such insertion, in case such commission is to be executed in the country : and the *Gazette* containing such advertisement shall be evidence to be received of such declaration having been filed.

The declaration being concerted between a creditor, or any other person, does not render void the commission of bankruptcy.

But if a trader, after docket struck against him, pay to the person who struck the same any money, or gratuity, whereby he receives more in the pound, in respect of his debt, than the other creditors, such payment or gratuity is an act of bankruptcy ; and, if any commission shall have issued, the Lord Chancellor may declare such commission valid, or order it to be superseded ; and the person receiving such consideration *forfeits his whole debt*, and shall repay the whole money or gratuity he received, for the benefit of the creditors of the bankrupt.

#### IV. LIABILITY OF MEMBERS OF PARLIAMENT.

Privilege of parliament does not protect from a commission of bankruptcy, and the commissioners, and all others, acting under the commission, may proceed thereupon, in the same manner as against any other bankrupt ; but members cannot be *arrested* or *imprisoned* during the time of such privilege, except in cases made felony by the act.

If any creditor, to the requisite amount, of any trader having parliamentary privilege, shall file an affidavit in any court of record in Westminster, that such debtor is a trader within the act, and shall sue out a summons ; then, if such trader, within *one calendar month* after personal service of the summons, shall not pay, secure, or compound for such debt, to the satisfaction of the creditor, he shall be deemed to have committed an act of bankruptcy.

Members of Parliament not paying conformably to the order or decree of a court of equity are guilty of an act of bankruptcy.

The 52 Geo. III. c. 144, for the *Better Preservation of the Independence of Parliament*, makes some important provisions for depriving members of the House of Commons of their seats, who become bankrupt, and do not, within a limited period, pay their debts in full.

Under this act, a member is declared utterly inca-

pable of sitting and voting in the House of Commons, during twelve calendar months from the issuing of the commission, unless, within the said period, such commission shall be superseded, or the creditors of such member, proving under the commission, shall be paid, or satisfied to the full amount of their debts under the commission.

And, by the 2d section, if, within twelve calendar months, the commission be not superseded, nor the debts satisfied, in the aforesaid manner, the commissioners shall certify the same to the Speaker of the House of Commons, and, thereupon, the election is declared to be void: and, fourteen days' notice having been previously inserted in the *Gazette*, the Speaker may issue his warrant to the Clerk of the Crown, to make out a new writ, for electing another member, in the room of such member, who shall have so vacated his seat.

Another disqualification, arising out of bankruptcy, may be mentioned under this head. By the 1 Geo. IV. c. 100, s. 5, no person, who has been a bankrupt, or taken the benefit of any insolvent act, or compounded with his creditors, and not paid twenty shillings in the pound, shall be eligible to be a commissioned officer in the London militia. Penalty for serving under such disqualification, 100*l*.

#### V. THE PETITIONING CREDITOR.

The creditor petitioning for a commission of bankruptcy must make an affidavit, before a master in chancery, of the amount of his debt, and must give bond to the amount of 200*l*. to the Lord Chancellor, to prove his debt and the act of bankruptcy.

The petitioning creditor, at his own cost, sues out the commission until the choice of assignees; when the commissioners may direct the assignees to re-imburse the petitioning creditor out of the first money which may be got in under the commission.

No commission shall issue unless the creditor, or of two or more persons being partners, petitioning for the same, shall amount to 100*l*. or upwards; or unless the debts of two creditors shall amount to 150*l*. or upwards; or unless the debts of three or more creditors shall amount

to 200*l.* or upwards : and every person who has given credit to any trader, upon valuable consideration, for any sum payable at a certain time, which time shall not have arrived when such trader committed an act of bankruptcy, may join in petitioning, *whether he shall or not have any security in writing, or otherwise, for such debt.*

Petitioning creditors may sue out a commission against one or more partners in a firm, to the exclusion of the rest ; and, in every commission against two or more persons, the Lord Chancellor may supersede the commission against one or more of them without affecting its validity against the rest.

In a separate commission against one partner, the other being solvent, the separate estate of the bankrupt must be applied to his separate creditors exclusively, *ex parte Yonge*, 2 V. & B 39. But the solvent partner is entitled to prove the loss which each partner ought to have borne, as a debt against his separate estate, 4 *Mod.* 477. But, where there is no joint estate or solvent partner, joint creditors may prove under a separate commission.

If the debt of the petitioning creditor be insufficient to support a commission, the Lord Chancellor, upon the application of any other creditor, having proved a sufficient debt, provided such debt has not been incurred prior to the debt of the petitioning creditor, may order such commission to be proceeded in, and, by such order, it becomes valid.

#### VI. AUXILIARY COMMISSION.

The Lord Chancellor may direct an auxiliary commission to issue for proof of debts *under* 20*l.* with the same powers as the original commission ; and all examinations of witnesses by such auxiliary commission must be taken *in writing*, to be subjoined to the examinations under the original commission.

The auxiliary commission has no power to examine the bankrupt.

#### VII. POWERS AND DUTIES OF THE COMMISSIONERS.

Before a commissioner can act, he must take an oath to the effect following :—

“ I, A. B., do swear that I will faithfully, impartially,  
“ and honestly, according to the best of my skill and  
“ knowledge, execute the several powers and trusts re-  
“ posed in me as a commissioner, in a commission of bank-  
“ ruptcy against \_\_\_\_\_ and that without favour  
“ or affection, prejudice or malice. So help me God.”—

Which oath the commissioners are required to administer to *one another*. The commissioners shall be paid 20*s.* each for every meeting, and the like sum for every deed of conveyance executed by them, and for the signature of the bankrupt's certificate; and where any commission shall be executed in the country, every commissioner, being a barrister-at-law, shall receive a further fee of 20*s.* for each meeting; and, in case the usual place of residence of such commissioner, being a barrister, is distant seven miles, or upwards, from the place where such meetings are holden, and he shall travel such distance, he may receive a further sum of 20*s.* for every such meeting. And every commissioner who shall receive from the creditors, or out of the estate of the bankrupt, more than the above sum, or who shall eat or drink at the charge of the creditors, or out of the estate of the bankrupt, or order any such expense to be incurred, shall be disabled for ever from acting in such or any other commission.

Commissioners are empowered to summon persons, examine them upon oath, and call for any deeds, papers, or documents, which appear necessary to establish the trading and act of bankruptcy; and, upon full proof of the petitioning creditor's debt, of the trading, and act of bankruptcy, shall adjudge the debtor a bankrupt. Notice of such adjudication must forthwith be given in the *Gazette*, and three public meetings appointed for the bankrupt to surrender; the last of which meetings shall be the forty-second day after.

No commission shall abate by reason of the demise of the crown, the death of a commissioner, or of the bankrupt himself, *after* adjudication.

Persons, by warrant of the commissioners, may break open any house, chamber, shop, warehouse, door, trunk, or chest, of any bankrupt, and may seize upon the body



or property of such bankrupt; and, if the bankrupt be in prison or in custody, they may seize any property (necessary wearing apparel only excepted) in the possession of such bankrupt, or any other person.

These powers, except as to the seizure of the *person*, extend to Scotland and Ireland, when the warrant is backed by the proper magistrate of those countries respectively.

Justices of peace may grant a warrant to search any house or premises *not* belonging to the bankrupt, on suspicion of property being concealed there; and persons executing such warrant are entitled to the same protection as is allowed by law in the execution of a search warrant for property reputed to be stolen and concealed.

Persons known, or suspected, to have any of the bankrupt's property in their possession, refusing to attend on the summons of the commissioners, may be apprehended; and, if they refuse to answer properly such interrogatories as are propounded, or if they refuse to surrender any deeds, documents, or papers, required of them, without lawful excuse, they may be imprisoned till they submit.

Persons summoned are entitled to their expenses, and every witness shall have his expenses tendered to him, in the same manner as is now by law required upon service of a subpoena to a witness in an action at law.

Persons attending to assist the commissioners in their inquiries, whether summoned or not, are free from *arrest* during such attendance, and also in going and returning. So, also, is a creditor attending to prove his debt, *List's Case*, 2 V. & B. 373.

Bankrupts refusing to attend at the appointed time may be apprehended; and, if they refuse to answer upon oath any questions touching their trading or property, or any grant or conveyance thereof, they may be committed to any prison the commissioners shall think fit.

The wife of the bankrupt may be also examined, or, on refusal, committed.

Jailors suffering any person to escape, committed by warrant of commissioners, forfeit 500*l*.

The power given to be exercised by the commissioners or the assignees may be exercised by the *major* part of the commissioners, and by one assignee, where only one shall have been chosen.

#### VIII. DEBTS PROVEABLE UNDER THE COMMISSION.

Every creditor may prove his debt by his own oath; and incorporated bodies by an *agent* duly authorized. One partner may prove on behalf of the firm, 19 *Ves.* 293. Persons living at a distance may prove by affidavit before a master in chancery; or, if the creditor reside abroad, by an affidavit before a magistrate where he is residing, attested by a public notary, British minister, or consul.

**SERVANTS' WAGES.**—When a bankrupt is indebted, at the time of issuing the commission, to any servant or clerk, in respect of wages or salary, the commissioners upon proof thereof, may order so much as shall be so due, not exceeding **SIX MONTHS' wages**, to be paid to such servant or clerk out of the estate; and such servant or clerk shall be at liberty to prove under the commission for any sum exceeding such last-mentioned amount.

**APPRENTICES.**—The issuing of the commission discharges any indenture of apprenticeship to the bankrupt; and, in case a premium has been received with an apprentice, the commissioners may direct a part to be repaid, for his use, proportioned to the term of the apprenticeship unexpired.

**SET-OFF DEBTS.**—When there are mutual debts between the bankrupt and any other person, they may be set-off one against the other, and the balance, if any, made proveable against the estate of the bankrupt.

Any debt upon bill, bond, note, or other negotiable security, or where credit has been given upon *valuable consideration*, though not due at the time the act of bankruptcy was committed, is proveable under the commission. So, if any person have been surety or bail for any debt of the bankrupt, and has paid the whole or part thereof, he is entitled to prove his demand in respect of such payment, and may receive dividends with the other creditors.

Interest on bills of exchange and notes over-due is proveable up to the date of the commission.

The obligee in any bottomry or respondentia bond, and the assured in any policy of assurance, may, after the loss or contingency has happened, claim under the commission. So may any annuity-creditor prove for the value of his annuity, regard being had to the *original cost* of such annuity.

No creditor, who has brought any action against the bankrupt for a demand prior to the bankruptcy, shall prove a debt under the commission without relinquishing such action; and, in case the bankrupt be in prison, at the suit of such creditor, he shall not prove his debt without giving sufficient authority for the discharge of such bankrupt: but the creditor shall not be liable to the costs of such action so relinquished by him.

When it appears to the assignees, or to two or more creditors, who have each proved debts to the amount of 20*l.* or upwards, that any debt is not justly due, in whole or in part, they may so represent it to the commissioners, who, on examination, have power to disallow the whole or part of such claim; but, in such case, the assignees, or complaining creditors, are liable to the costs of such application.

The Statute of Limitations bars the proof of any debt, though the bankrupt admit the debt, 2 *Rose*, 245. But in an action by the assignees against a debtor to the bankrupt, it has been held he cannot object that it did not appear 100*l.* of the petitioning creditor's debt had been contracted within *six years* before the issuing of the commission, C. P. 8 *Bing*. 285.

Creditors who have proved to the amount of 20*l.* may, if dissatisfied with the settlement of attorneys' bills, by the commissioners, have them settled by a master in chancery, who, for such settlement, shall receive 20*s.* and no more.

#### IX. THE ASSIGNEES.

At the second meeting appointed by the commissioners, assignees shall be chosen; and all creditors, who have proved debts to the amount of 10*l.* and upwards,

shall be entitled to vote; and also any person authorized by letter of attorney; and the choice shall be made by the major part in value of the creditors; but the commissioners shall have power to reject any person who shall appear to them unfit; and, upon such rejection, a new choice shall be made.

When only one or more partners of a firm are bankrupt, a creditor to the *whole* firm is entitled to vote in the choice of assignees, and to assent to or dissent from the certificate; but such creditor shall not receive any dividend out of the separate estate of the bankrupt till all the other creditors are paid the full amount of their debts, unless such creditor shall be a petitioning creditor.

The commissioners, on stating the reason thereof, in writing, may appoint a provisional assignee until assignees be chosen by the creditors.

The assignees, with the consent of the major part in value of the creditors, at a public meeting, may compound with any debtor to the bankrupt, or may give time or take security for the payment, or may submit any dispute to arbitration: and, if *one-third* in value of the creditors do not attend to give their consent, the same may be done with the authority of the commissioners.

Assignees shall keep an account, where they shall enter all property received by them and all payments on account of the bankrupt, which account every creditor may inspect at seasonable times; and the commissioners may, at all times, summon the assignees before them, and require them to produce all books, papers, deeds, and other documents, relating to the bankruptcy, in their possession; and, if they shall not come at the time appointed, the commissioners may, by warrant, cause such assignees to be brought before them; and upon their refusing to produce such books, deeds, writings, or documents, they may commit the party to prison, there to remain, without bail, until they shall submit themselves to the commissioners.

The commissioners shall, at the meeting appointed for the last examination of the bankrupt, appoint a public

meeting, not sooner than four calendar months from the issuing of the commission, nor later than six calendar months from the last examination of the bankrupt, of which they shall give twenty-one days' notice in the *Gazette*, to audit the account of the assignees; and the assignees shall deliver, on oath, a true statement, in writing, of all moneys received and paid by them; and the commissioners may examine the assignees touching the truth of such account; and in such account the assignees shall be allowed all reasonable expenses.

Assignees employing the money of the bankrupt for their own advantage, to be charged 20*l.* per cent. interest.

The proceeds of the estate of the bankrupt are not to be deposited in any banking-house, or place in which any assignee, commissioner, or solicitor to the commission is interested.

#### X. PROPERTY LIABLE UNDER THE BANKRUPTCY.

The assignees are vested with the whole personal estate of the bankrupt, as well as with whatever property he may purchase, or which may revert, descend, or be devised to him, before he shall obtain his certificate. Also, with all lands, tenements, and hereditaments, in England, Scotland, Ireland, or in any colony or plantation in His Majesty's dominions. And the commissioners may, by deed, make sale of any real property whereof the bankrupt is seized, of any estate-tail in possession, reversion, or remainder, (except the reversion or remainder is in the Crown,) and the sale shall be good against the bankrupt, the issue of his body, and every other claimant. Lastly, the commissioners may dispose of any copyhold or customary-hold land; the purchaser compounding with the lord of the manor for any fines, or services, prior to being admitted into possession.

All property which the bankrupt has in right of his wife passes to the assignees, except such as is settled to her own sole benefit.

If the bankrupt has granted or pledged any property, or deposited any deeds, upon condition of redemption at a future day, the assignees, before the time of the performance of such condition, may tender payment of

the money, in the same way as the bankrupt might have done, and dispose of the property for the benefit of the creditors.

If any bankrupt, *being at the time insolvent*, shall (except upon the marriage of his children, or for a valuable consideration) have conveyed to his children, or any other person, any property, leases, or chattels; or made over any bills, bonds, notes, or other securities, or have transferred his debts to any other person, the commissioners shall have power to receive, sell, or dispose of the same.

**RENT AND LEASES.**—No distress for rent, after an act of bankruptcy, shall be valid for more than A YEAR'S RENT, but the landlord may prove under the commission for the residue.

A bankrupt entitled to any lease, if the assignees accept the same, shall not be liable to pay any rent after the date of the commission; and, if the assignees decline the same, he shall not be liable, in case he deliver up the lease to the lessor within fourteen days after he have notice that the assignees have declined.

All powers vested in a bankrupt, which he might legally execute for his own benefit (except the right of nomination to a *vacant* ecclesiastical benefice), may be executed by the assignees for the benefit of the creditors. A benefice, *not vacant*, the right of presentation may be sold under the commission.

All property which the bankrupt holds in trust, whether real or personal, may, on petition of the parties interested, be conveyed in trust to such other person as the Lord Chancellor may appoint.

#### XI. ACTS VALID WITH OR BY A BANKRUPT.

All conveyances, contracts, dealings, and transactions with any bankrupt; and all executions and attachments against his property or chattels, *bonâ fide* made and executed for two calendar months before the date and issuing of the commission, are valid, notwithstanding any prior act of bankruptcy, provided the parties had no notice of such prior act of bankruptcy.

All payments *bonâ fide* made by the bankrupt to any

creditor, (such payment not being a *fraudulent preference* of such creditor,) as well as all payments to the bankrupt, before the date and issuing of the commission, shall be deemed valid, notwithstanding any prior act of bankruptcy, of which the parties had no previous notice. The issuing of a commission announced in the *Gazette* shall be deemed notice of a prior act of bankruptcy, if the persons to be affected by such notice may reasonably be presumed to have seen the same.

Persons having in their possession the money or effects belonging to a bankrupt shall not be endangered by reason of the payment or delivery thereof to the bankrupt, or his order, provided such persons had no notice that an act of bankruptcy had been committed.

Purchases *bonâ fide* made for a valuable consideration, when the purchaser had notice of an act of bankruptcy, cannot be impeached, unless the commission be sued out within *twelve calendar months* after the act of bankruptcy.

Neither can titles to property sold under the commission be impeached, unless proceedings to supersede the commission be commenced within twelve months.

Also, if the commission be afterwards superseded, persons from whom the assignees have recovered, or who have delivered up any personal estate, or paid any debt to the assignees, are discharged from any future claim of the bankrupt, unless notice to try the validity of the commission had been given within the last-mentioned period.

If the bankrupt intend to dispute the commission, he must give notice within two calendar months ; or, if out of the United Kingdom, within twelve.

#### XII. PAYMENT OF A DIVIDEND.

The commissioners shall not, sooner than four, nor later than twelve, calendar months from the commission, appoint a public meeting, of which twenty-one days' previous notice shall be given in the *Gazette*, to make a dividend, at which meeting all creditors who have not proved, may prove their debts; and, at such meeting, the commissioners shall forthwith order such part of the net

produce of the bankrupt's estate to be shared among such creditors as have proved, in proportion to their respective debts : but no dividend shall be declared unless the accounts of the assignees have been first audited.

If the bankrupt's estate is not wholly divided upon the first dividend, the commissioners shall, within eighteen months from the commission, appoint a public meeting, of which twenty-one days' previous notice has been given in the *Gazette*, to make a *second* dividend, when all creditors who have not proved may prove their debts. Such second dividend shall be final, unless some process at law be depending, or some part of the property of the bankrupt may afterwards come to the assignees, in which case they shall, within two calendar months after the same is converted into money, divide the proceeds among the creditors.

No action for any dividend shall be brought against the assignees by any creditor ; but if the assignees shall refuse to pay such dividend, the Lord Chancellor may, on petition, order payment, with interest for the time it has been withheld, and the costs of the application.

No creditor, having security for his debt, or having made any attachment in London, or any other place, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt ; except in respect of any execution or extent served and levied, by seizure upon, or any lien upon any part of the property of such bankrupt *before* the bankruptcy ; provided that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the *prejudice of other fair creditors*, but shall be paid rateably with such creditors.

#### XIII. SURRENDER AND EXAMINATION OF THE BANKRUPT.

If any person, against whom a commission has been issued, shall not, *before three o'clock upon the forty-second day* after notice, in writing, to be left at the usual place of abode of such person, or personal notice, in case he be in prison, surrender himself to the commissioners, and



submit to be examined before them, upon oath, or, being a Quaker, upon solemn affirmation ; or, if such bankrupt shall not, upon examination, discover all his real or personal estate, and how, and to whom, upon what consideration, and when he disposed of, assigned, or transferred any such estate, and all books, papers, and writings relating thereto (except such part as shall have been fairly disposed of in the way of trade, or laid out in the ordinary expenses of his family) ; or if any bankrupt shall not deliver up all his property, books, papers, and writings relating thereto, as he in his possession or power (except the necessary wearing apparel of himself, his wife, and children) ; or if any such bankrupt shall remove, conceal, or embezzle, any part of such estate, to the value of TEN POUNDS or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors ; every such bankrupt shall be deemed guilty of FELONY, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge ; or shall be liable to be imprisoned only, or imprisoned and kept to hard labour in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years. Under the old law, prior to the 5 Geo. IV. it was felony only when the bankrupt concealed property to the amount of 20*l*.

The Lord Chancellor, from time to time, may enlarge the period for the bankrupt surrendering himself, so that it is done six days before the expiration of the time for the surrender.

The commissioners, or the assignees, when chosen with the consent of the commissioners, may make an allowance for the support of the bankrupt and his family until he shall have past his last examination.

The bankrupt is required to attend the assignees at all reasonable times to assist in making out his accounts ; he may, also, inspect his books and papers in the presence of the assignees, and bring with him any two persons to assist him till the period allowed for examination has expired ; and, after he has obtained his certificate, he shall, upon demand, in writing, attend the assignees,

to settle any accounts between his estate, and any debtor or creditor; or attend any court of record to give evidence touching the same, or do any act necessary for getting in the said estate, for which attendance he shall be paid 5s. per day; and if he shall, after such demand, not attend, or on such attendance refuse to do any of the matters aforesaid, without sufficient cause, the commissioners may, by warrant, cause such bankrupt to be apprehended and committed to such prison as they shall think fit, there to remain till he shall conform, to their satisfaction, or of the Lord Chancellor.

The bankrupt is free from arrest and imprisonment in coming to surrender, and till the expiration of the time appointed for his examination. Officers arresting a bankrupt during this period to forfeit to his use 5*l.* for every day they detain him in custody.

The commissioners, at the time appointed for the last examination, may adjourn such examination; and the bankrupt shall be free from arrest during that time, provided it does not exceed three calendar months.

Bankrupts in prison or custody, under any process, may be brought up, by warrant of the commissioners, for examination.

Persons wilfully concealing any property of the bankrupt forfeit 100*l.* and double the value of the property concealed; and any person, after the time allowed to the bankrupt, voluntarily discovering any part of the bankrupt's effects, not before come to the knowledge of the assignees, shall be allowed five per cent. thereupon, and such further reward as the major part in value of the creditors may award.

The bankrupt, or any other person, wilfully swearing falsely, to suffer the penalties of perjury.

#### XIV. THE CERTIFICATE.

Every bankrupt who shall have surrendered, and in all things conformed himself to the laws in force concerning bankrupts, at the time of issuing the commission against him, shall be discharged from all debts due by him when he became bankrupt, and from all claims and demands made proveable under the commission, in case

he shall obtain a certificate of such conformity so signed and allowed, and subject to such provisions as directed ; but no such certificate shall discharge any person who was partner with such bankrupt at the time of his bankruptcy, or who was then jointly bound, or had made any joint contract with such bankrupt. The only exception to the rule that all debts proveable are barred by the certificate, is that of a debt due to the Crown, *Atk.* 262, *Bunb.* 202.

The certificate to be signed by FOUR-FIFTHS in number and value of the creditors who shall have proved debts under the commission to the amount of 20*l.* or upwards ; or, after six calendar months from the last examination of the bankrupt, then either by three-fifths in number and value, or by nine-tenths in number, who shall thereby testify their consent to the said bankrupt's discharge : and no certificate shall be a discharge unless the commissioners shall, in writing, certify to the Lord Chancellor that such bankrupt has made a full discovery of his estate and effects, and in all things conformed ; and that there does not appear any reason to doubt the truth or fulness of such discovery ; and, also, that the creditors have signed in manner directed ; and, unless the bankrupt make oath, in writing, that such certificate and consent were obtained without fraud ; and unless such certificate shall, after such oath, be allowed by the Lord Chancellor, against which allowance any of the creditors of the bankrupt may be heard.

Any contract or security given by the bankrupt to any creditor for his signature to the certificate is void and not recoverable.

No bankrupt to be arrested or imprisoned for any debt made proveable under the commission of bankruptcy, after obtaining his certificate.

No bankrupt, after his certificate has been allowed, is liable to satisfy any debt or claim from which he is discharged by his certificate, upon any promise, contract, or agreement, unless made *in writing*.

Where a person who has been bankrupt *before*, or compounded with his creditors, or taken the benefit of the Insolvent Act, shall obtain his certificate, unless his

estate shall produce, after all charges, sufficient to pay every creditor under the commission 15s. in the pound, such certificate shall only protect his *person* from arrest and imprisonment; but his *FUTURE* estate and effects (except his tools of trade and necessary household furniture, and the wearing apparel of himself and family) shall vest in the assignees, who may seize the same for the benefit of the creditors.

If an assignee, indebted to the estate, become bankrupt, his certificate will only exempt his person from arrest and imprisonment; but his *future* effects will be liable for the *full* amount of his debts, together with interest, due to the estate for which he was assignee.

XV. ALLOWANCE TO THE BANKRUPT.

Every bankrupt who shall have obtained his certificate, if the assets of his estate shall produce 10s. in the pound, shall be allowed five per cent. out of such produce, provided such allowance shall not exceed 400l.; if the produce yields 12s. 6d. in the pound, seven and a half per cent. provided such allowance shall not exceed 500l.; if the produce yields 15s. in the pound, or upwards, ten per cent. provided such allowance shall not exceed 600l. But, if the produce shall not yield 10s. in the pound, then the bankrupt shall only be allowed so much as the assignees think fit, not exceeding three per cent. and 300l.

In joint commissions, under which any partner shall have obtained his certificate, if a sufficient dividend has been paid, upon the joint and separate estate of such partner, he may receive his allowance, though the others are not entitled.

No bankrupt to be entitled to his certificate, or to any allowance, if such bankrupt have lost, by any sort of *gaming or wagering* in one day, 20l. or within one year next preceding his bankruptcy, 200l.; or if he shall, within one year next preceding his bankruptcy, have lost 200l. by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually trans-

ferred or delivered in pursuance of such contract; or shall, after an act of bankruptcy committed, or, *in contemplation of bankruptcy*, have destroyed, altered, mutilated, or falsified, or caused to be so done, any of his books, papers, writings, or securities; or made, or been privy to the making of any false or fraudulent entries in any book of account, or other document, with intent to defraud his creditors; or shall have concealed property to the value of 10*l.* or upwards; or if any person, having proved a false debt under the commission, such bankrupt being privy thereto, or afterwards knowing the same, shall not have disclosed the same to the assignees within one month after such knowledge.

The assignees, upon request, to declare to the bankrupt how they have disposed of his property, and account to him for the surplus, if any: but no surplus to be paid till the creditors have received INTEREST on their respective debts from the date of the commission.

#### XVI. COMPOSITION WITH THE BANKRUPT.

At any meeting of creditors, after the bankrupt shall have passed his last examination, if the bankrupt, or his friends, shall make a *tender of composition*, which nine-tenths in number and value of the creditors assembled shall accept, another meeting shall be held, of which twenty-one days' previous notice shall be given in the *Gazette*; and if, at such second meeting, nine-tenths in number and value of the creditors then present shall also agree to accept such offer, then the Lord Chancellor may supersede the commission.

In deciding on such offer, creditors *under 20*l.** are not entitled to vote, but their debts are computed *in value*: any person residing out of England may vote, by letter of attorney, properly attested; and the bankrupt shall if required, make oath that no undue means have been employed to obtain the assent of any creditor to such arrangement.

#### XVII. RECORD OF PROCEEDINGS.

The Lord Chancellor may appoint a proper person, who shall, by himself or his deputy, enter on record all

matters relating to commissions, and have the custody of the entries thereof; and the person so to be appointed, and his deputy, shall continue in their respective offices so long as they shall behave themselves well, and shall not be removed, except by order, in writing, under the hand of the Lord Chancellor; on sufficient cause therein specified.

No matter connected with the commission to be received as evidence in any court unless so entered on record; for which the officer is to receive for every commission, adjudication of bankruptcy, assignment, or order for vacating the same, having the certificate of such entry endorsed thereon respectively, 2s. each; and for the entry of every certificate of conformity, 6s.; and the Lord Chancellor may, on petition, direct any depositions or proceedings relative to such bankruptcy to be entered on record, so that all persons interested therein may, if necessary, search for matters so entered.

Commissions, conveyances, affidavits, advertisements in the Gazette, and sales by auction relating to bankruptcy, are exempt from duty.

#### XVIII. LORD CHANCELLORS' ORDERS.

The 135th section of the New Bankrupt Act, apparently gives a legislative authority to the Chancellors' orders in bankruptcy; it may be proper, therefore, shortly to notice these orders.

By an order of Lord Loughborough, March 8th, 1794, an assignee becoming bankrupt, is removable, and a new assignee to be appointed by the creditors.

By an order, Nov. 26th, 1798, the petitioning creditor is directed to attend on the opening of the commission to explain the nature and consideration of the debt due to him.

Quorum commissioners, in commissions of bankruptcy to be executed in the country, are to be barristers.—*Order*, 12th Aug. 1800. The evasion of this order is a ground for superseding the commission, 1 *Rose*, 58.

No docket to be struck but between the hours of ten o'clock in the morning and two o'clock in the afternoon, and between the hours of six and eight o'clock in the

evening; and in case two or more persons apply at the same time to strike a docket against the same person, and both of them be prepared to issue a commission, then it shall be determined by lot which person shall issue such commission, *Erskine C. 29th Dec. 1806.*

This order was amended by an order of Lord Eldon, 13th April, 1815, by which the morning hours are extended to three o'clock in the afternoon, and the holidays in the Secretary of Bankrupts' Office limited to Christmas-day and Good-Friday.

Creditors signing their assent to the commissioners for sealing and signing the certificates of bankrupts are to write, opposite their respective names, the day of the month and year on which they sign the same, Eldon, *8th Aug. 1809.*

All petitions in bankruptcy, presented for hearing, to be signed by the petitioners, and the signature to be attested by the solicitor actually presenting the petition, Eldon, *12th Aug. 1809.*

Commissioners not to be creditors of the bankrupt, Eldon, *25th July, 1817.*

Dockets struck more than a month, without commission issuing, to be considered expired, and of no effect for issuing a commission thereon, Eldon, *28th May, 1819.*

#### XIX. JURISDICTION OF THE BANKRUPT LAWS.

The Bankrupt Laws extend to aliens, denizens, and women. They do not extend to Scotland nor Ireland, except where expressly mentioned. Neither do they extend to the colonies. Nor do they bind the Crown.

### CHAP. XV.

#### *Insolvency.*

By the term insolvent is meant a person that is not in a condition to pay his debts, in the ordinary course, as persons carrying on trade usually do, *Bayley v. Schofield*, 1 M. & S. 250.

The great distinction between bankruptcy and insol-

vency is this. If a bankrupt receive his certificate, he is for ever discharged from all his debts; but an insolvent, when discharged, contracts, at the instant of his discharge, a future liability to pay his debts, by a solemn instrument which he signs, and which the creditors have the power of enforcing ever after. The insolvent, though discharged by due process of law, when no fraud is proved against him, is still liable, to the latest period of his life, to pay his debts *in full*; the creditors reserving authority to compel the payment of their debts, when the insolvent is in a condition to liquidate them, by bringing him up from time to time before the Court, which will decide whether he be then able to pay his debts out of the property he has acquired.

In the year 1820, a special tribunal, called the "Court for Relief of Insolvent Debtors," was appointed, for the purpose of receiving the surrender of property and effects, for the benefit of creditors, of persons in a state of insolvency. It consists of a chief and two other commissioners, being barristers of ten years' standing, appointed by the Crown, with a chief clerk, provisional assignee, receivers, and other officers, appointed by the court. It is a court of record, and has the same power as the superior courts in Westminster, in compelling the attendance of witnesses, the production of papers, in punishing for contempt, and protecting persons attending the Court from arrest; but it cannot award costs, except in particular cases, and witnesses are not obliged to attend, unless their reasonable expenses are previously tendered to them.

The Court sits twice a week, in Portugal-street, Lincoln's-inn-fields, and no fees are taken, except those established by the Court. The several laws relative to insolvent debtors were amended and consolidated by the 7 Geo. IV. c. 57, which is to continue for three years; and the provisions of this act we shall now present to the reader, under the following arrangement:—

- I. *The Insolvent's Petition.*
- II. *The Schedule.*
- III. *The Assignees.*
- IV. *The Opposing Creditor.*



- V. *Discharge of the Insolvent.*
- VI. *Future Liability of the Insolvent.*
- VII. *Fees and Attorneys of the Court.*
- VIII. *Circuit Commissioners.*
- IX. *Orders of the Insolvent Court.*
- X. *The Lords' Act.*

#### I. THE INSOLVENT'S PETITION.

Any person in *actual* custody for any debt, damages, costs, or money due for contempt of any court whatever, may, within fourteen days from his first detention, petition the Insolvent Court for his discharge; stating, in such petition, the place of his confinement, the time when the petitioner was taken into custody, the name of the parties, and the amount of debts for which he is detained, and praying to be discharged, not only against the demands of the persons detaining him, but against all other creditors, having claim at the time of presenting the petition, which petition shall be signed by the prisoner and filed in court.

At the time of subscribing the petition, the insolvent executes an assignment to the *provisional* assignee of the Court, renouncing all title to his property and effects, except wearing apparel, working tools, bedding, and such necessaries of himself and family, as shall not exceed the value of 20*l.* During confinement, the Court may order an allowance for the support of the petitioner; and, in case he does not obtain his discharge under the act, the assignment is void.

Persons not actually in custody *within the walls of a prison*, and during the proceedings thereon, are not entitled to the benefit of the act. But, after an order has been obtained for hearing the petition, the Court may, in case of sickness, properly attested, or in case of a prison being crowded, dispense with the *actual* custody of the person.

The filing of a petition is an act of bankruptcy, and if a commission be issued *within two calendar months*, vacates the assignment: nevertheless, the Court proceeds to hear and adjudicate as if no commission had issued; and if the insolvent obtain his certificate

under the commission of bankruptcy, the property which may remain to him after such certificate, or to which he may subsequently become entitled, is liable to the assignees of the Court, as if the assignment had continued in force.

When a petition is dismissed, or the assignment avoided by a commission of bankrupt, the acts of the provisional or other assignee cannot be impeached.

The *voluntary preference* of a creditor, by conveyance of money, goods, bills, or other property, after the filing of the petition, or within three months prior to the imprisonment of the petitioner, being then in insolvent circumstances, is fraudulent and void.

The provisions of 3 Geo. IV. c. 39, mentioned at page 264, are extended to the assignees of the insolvent.

When the prisoner has executed any warrant of attorney, or given any *cognovit actionem*, whether for a valuable consideration or otherwise, such cannot be acted upon against the goods of the petitioner after his imprisonment.

The provisional assignee may dispose of all the property of the insolvent, and may sue, in his own name, for the recovery of any debt or rights due to the insolvent; the proceeds being applied to defray expenses and to the purposes of the act.

## II. THE SCHEDULE.

Within fourteen days after the petition is filed, the insolvent prepares a schedule of all his debts, distinguishing such as may be admitted from those disputed by the prisoner; and, also, an account of all his property, and of all places, fees, salaries, pensions, trusts, and whatever else, from which he derives any benefit or emolument; together with an account of all debts owing to him, and the names of the debtors, their places of abode, and of the witnesses who can prove such debts. Lastly, the schedule must describe the wearing apparel, bedding, tools, and other necessities, not exceeding 20*l.* which the insolvent is allowed to retain, with the value of each excepted article.

After the petition and schedule are filed, the Court

appoints a day for hearing; which, in no case, must be more than four calendar months from the date of such appointment.

### III. THE ASSIGNEES.

At any time after the filing of the petition, the Court appoints assignees from among the creditors, to whom, on their acceptance of the appointment, an assignment is made, by the *provisional assignee*, of the property and effects of the prisoner, for the benefit of his creditors. The assignees are empowered to get in all property and effects of the prisoner; and, in case of any real estate, the same, within the space of six months, shall be sold by public auction, in such manner and place as the major part, in value, of the creditors shall approve.

Creditors are to meet thirty days before the sale of a real estate, and signify their approval thereof in writing; and of this meeting fourteen days' notice must be given, in the *Gazette*, and also in some newspaper in the vicinity of the insolvent's residence.

Copyhold, or customary estate may be conveyed to purchasers by the assignees.

Goods in possession and disposal of the insolvent, whereof he is reputed owner, are to be deemed his property; but this does not affect the assignment of any ship or vessel, duly registered, according to the 6 Geo. IV. c. 110.

Within *three months*, at the farthest, and so from time to time, as occasion shall require, the assignees shall make up an account, upon oath, before an officer of the Court, or justice of the peace, of the prisoner's property and effects; and, in case of a balance in hand, a dividend must forthwith be made, of which dividend thirty days' previous notice shall be given; and every creditor, whose debt shall be stated *admitted* in the prisoner's schedule, shall be allowed to share in the dividend, unless the prisoner, assignees, or any creditor, shall object to such debt, in which case the Court shall decide.

An assignee having neglected to make *quarterly* returns of the state of the property of an insolvent, the Court refused to allow him to act as assignee a *second* time, *Insolvent Court*, Jan. 3d, 1827.

When any part of the property is so circumstanced that the *immediate* sale of it might be prejudicial to the interests of the prisoner, the Court may make a special order, directing the management of such property till it can be properly sold ; and if the debt can be paid by way of mortgage, instead of sale, the Court may give directions for that purpose.

The assignees may execute powers, which the insolvent might have executed for his own benefit, such as granting leases, taking fines, transferring public stock, or annuities ; but they cannot nominate to a *vacant* ecclesiastical benefice.

On complaint, by the prisoner, or any of his creditors, the Court may inquire into the conduct of the assignees ; and, in case of malversation, award costs against them.

No suit in equity can be commenced by the assignees without the consent of a majority of the creditors in value.

The assignees, with the consent of one commissioner, and the major part of the creditors in value, may compound for any debt due to the prisoner ; or may submit differences, connected with the estate of the insolvent, to arbitration.

In case any assignee shall die, or be unwilling to act, the Court may appoint a fresh assignee.

Assignees who wilfully employ or retain any part of the proceeds, may be charged with interest at a rate not exceeding 20*l.* per cent. per annum.

Dividends unclaimed for twelve months are to be paid into Court to the credit of the estate of the insolvent ; in default of payment, the goods of the assignees may be distrained ; or, if no distress, the party may be imprisoned.

Assignees removed, or their executors refusing to deliver up the property, writings, or papers of the insolvent, may be imprisoned until they comply with the order of the Court.

CLERGYMEN.—The assignees, in case the insolvent is a beneficed clergyman or curate, are not entitled to the income of such benefice or curacy ; but they may

obtain a sequestration of the profits for the benefit of creditors.

**OFFICERS IN THE ARMY OR NAVY.**—Neither are the assignees entitled to the pay, half-pay, pension, or other emoluments, of any person, who is, or has been, in the army, navy, or civil service of the government, or of the East-India Company; but the Court may order, subject to the approval of the heads of public offices, a *portion* of such pay, half-pay, pension, or emoluments, to be appropriated to the liquidation of the debts of the insolvent.

**LANDLORD'S RENT.**—Distress for rent, after the arrest or imprisonment of the petitioner, is not available for more than a *year's rent* accrued prior to the assignment to the assignees; but the landlord may be creditor to the estate for the overplus.

#### IV. THE OPPOSING CREDITOR.

On the day appointed for hearing the petition, any creditor, having first made oath of his debt, may oppose the discharge of the prisoner, and, for that purpose, put such questions, and examine such witnesses, as the Court shall admit, touching the matters contained in the petition and schedule; or a creditor may require, or the Court direct, that an officer of the Court shall investigate the accounts and schedule of the prisoner, and report thereon to the Court. If the Court deem the opposition to the discharge of the prisoner frivolous and vexatious, it may award such costs as may appear just and reasonable; but if it be shown to the satisfaction of the Court that the prisoner has been guilty of some *fraudulent* concealments, the opposing creditor is entitled to the costs of opposition.

Notice of the time for hearing the petition is to be given to creditors whose debts amount to five pounds, and to be advertized in the *Gazette*.

Where creditors reside out of Middlesex, Surrey, London, or Southwark, affidavits may be tendered in opposition to the prisoner's discharge.

## V. DISCHARGE OF INSOLVENT.

In case the prisoner is not opposed, and the Court is satisfied with his schedule, it may order his immediate discharge from custody, or it may direct the prisoner to be detained in custody, for any period not exceeding six months, to be computed from the time of filing the petition. Such discharge frees the prisoner from all claims and costs arising from contempt or otherwise, issuing out of any court, ecclesiastical or civil.

But if the prisoner has *destroyed his books*, or falsified, or made false entries, or *withheld entries* from them, or otherwise acted in a *fraudulent manner* towards his creditors, or wilfully omitted any thing in his schedule, he may be imprisoned for any term not exceeding THREE YEARS; or, when the prisoner has contracted debts fraudulently by *means of a breach of trust*, or put creditors to any unnecessary expense, or shall have incurred debts by means of any false pretence, or without having any probable expectation, at the time when contracted, of paying them; or shall be indebted for damages for criminal conversation with the wife, or for seducing the daughter or servant of the plaintiff; or for *breach of promise of marriage*; or for damages in any action for malicious prosecution, *libel, slander*, or trespass, the Court may extend the imprisonment to TWO YEARS.

When the prisoner is not discharged, the Court may, on application for that purpose, order the creditor at whose suit he is detained to pay any sum not exceeding 4s. weekly; and, in default thereof, he is to be discharged.

The discharge extends to sums payable by annuity, the annuitants being admitted as creditors to the estate of the insolvent at a fair valuation of their interest.

The discharge does not extend to any debts due to the Crown nor for any offence against the revenue laws, nor at suit of any sheriff, or other public officer, upon any bail-bond entered into for any person prosecuted for such offence, unless the Treasury certify its consent to the discharge.

Insolvents under writ of *capias* or *extent* must apply to the Barons of the Exchequer to be discharged.

The Court has power to order prisoners detained in confinement to be kept within the walls.

#### VI. FUTURE LIABILITY OF THE INSOLVENT.

Before adjudication on the petition, the Court shall require of the insolvent to execute a warrant of attorney, empowering the Court to enter up judgment against him in one of the superior courts of Westminster, in the name of the assignees, or provisional assignee, for the *amount of the debts unpaid*; and when the insolvent is of sufficient ability to pay such debts, or is dead, leaving assets for that purpose, the Court may permit execution to be taken out upon the judgment against the property of the prisoner acquired after his discharge; and such proceeding may be renewed till the *whole of the debts, with costs*, due by the prisoner shall be paid and satisfied.

But no person, after judgment entered up, is liable to *imprisonment for any debt*, to which the adjudication of the Court extended.

When an insolvent is entitled to the benefit of the act, no execution, except upon the judgment under the act, can issue against him for debt contracted prior to his confinement; but he may be proceeded against for a debt which could not be enforced at the period of his discharge.

If a prisoner, after discharge, become entitled to any stock in the public funds, or to any bills, notes, or other things, in action, which cannot be taken in execution under the judgment, and refuse to give up the same, then he may, on the complaint of the assignees, be remanded into custody.

When an order for the discharge of a prisoner has been issued by mistake, the Court may amend or revoke it, and, if necessary, re-commit him to custody.

An insolvent after his discharge may, on the application of an assignee to the Court, be again examined as to the estate and effects set forth in his schedule, and, if he

refuse to appear, or answer questions upon oath, he may be re-committed.

Persons wilfully omitting, with *intent to defraud creditors*, any thing in the schedule so sworn to, or excepting in it bedding, apparel, working tools, and other necessities to a greater value than 20*l.*, or persons assisting therein, are guilty of a misdemeanor, and liable to be imprisoned, and kept to hard labour, for any period not exceeding three years.

No uncertificated bankrupt, nor any person having had the benefit of this or any former insolvent act, can have it a *second* time within FIVE YEARS, unless three-fourths in number and value of the creditors consent to it, or unless it appear to the Court that such person, since his bankruptcy, or his discharge, has done his utmost to pay all just demands, and that the debts which he has subsequently incurred have been unavoidable from inability to acquire subsistence for himself and family.

Married women are entitled to the benefit of the act, and may petition the Court on executing a special conveyance and assignment.

#### VII. FEES AND ATTORNEYS OF THE COURT.

The Court may appoint attorneys to practise therein. But any attorney, removed from the files of the Court, continuing actually to practise, is guilty of a contempt, and liable to fine and imprisonment.

Sales by auction, or any conveyance, affidavit, or other instrument, are exempt from duty.

Advertisements are to be inserted, and not to be charged more than 3*s.* each, by the proprietors of newspapers.

The officer of the Court is to produce schedules and proceedings of the Court, if required by the insolvent or his creditors; and such documents are to be admitted, in all courts of law, as legal evidence.

The keepers of prisons, or their deputies, are entitled to the sum of 3*s.* from each prisoner, for carrying him before the Court on the hearing of his petition and schedule.



## VIII. CIRCUIT COMMISSIONERS.

Three commissioners are severally to make circuits and attend at the towns and places appointed for insolvents in the country to appear; their powers as to the estate and effects of insolvents, and as to the schedule and petition, are the same as those already specified when acting in the metropolis.

The expense of conveying the insolvent to the place appointed is not to exceed 1s. per mile, to be paid to the gaoler, or officer in whose custody he is conveyed; such charge to be defrayed out of the effects of the petitioner, if sufficient for the purpose: if not, by the treasurer of the county, city, or town, in which the petitioner is confined.

The clerk of the peace, or his deputy, is to act as clerk to the commissioner; and receive from every petitioner, in whose case he acts, the sum of 5s. and no more; the same to be in lieu of all fees; and such fee to be paid previous to the bringing up the petitioner before such chief or other commissioner.

Notice of the time and place of attendance of the commissioner in each county, city, or town, to be given in the *London Gazette*, and in some public journal, or newspaper, published in each county respectively, once in each of the two weeks immediately preceding the time appointed for such attendance.

Copies of the schedule and petition to be lodged with the clerk of the peace; and the clerk, or his deputy, shall, on the reasonable request of the petitioner, or of any creditor, produce such petition and schedule, and books, papers, and writings, and permit them to inspect and examine the same, on the payment of 1s.; and such clerk of the peace, or his deputy, shall provide a copy of such petition or schedule, or such part thereof as shall be so required; for which he shall be entitled to receive 4d. for every sheet containing seventy-two words, and no more, unless the same shall be the last or only sheet, in which case he shall be entitled to 4d. although it does not contain seventy-two words.

## IX. ORDERS OF THE INSOLVENT COURT.

With the following orders of the Insolvent Court, dated June 13, 1826, it may be generally useful to those who think of applying to the Court for relief to be previously acquainted.

1. That the attorney of every prisoner shall cause his bill, where the same exceeds six pounds, to be taxed by the proper officer of the Court, and delivered, with the allocatur thereon, to such prisoner, one week, at least, before the hearing of the matters of his petition.

2. That every prisoner shall, with his schedule, file a general balance-sheet of his receipts and expenditure, from the date of the earliest debt in his schedule up to the time of signing his petition, including all property, of every kind, with description of the same, which he may have had at any time during that period; together with the time when, persons to whom, and consideration for which, any part thereof shall have been disposed of, or parted with by him; and that, in the said general balance-sheet, reference may be made, for the particulars of any matter, to the special balance-sheet, which will be required, according to the statute, in all schedules filed after the twenty-eight day of July next; but that, in the schedule, reference may not be made to such general balance-sheet: and that the prisoner shall, also, state, in the said general balance-sheet, the cause of his insolvency.

3. That the petitions, schedules, and the books and papers filed therewith, shall be produced, by the proper officer, for inspection and examination, on Mondays, Wednesdays, and Fridays, until the last day of entering opposition, between the hours of ten and four, and on no other days: notice to produce any such books or papers, at a hearing by the Court, must be given to the officer having the custody thereof on or before the day preceding the day of hearing.

4. That the practice concerning the appointment of assignees, in cases where no assignee has been appointed before the hearing, shall be as follows:—

They may be appointed by the Court or a commissioner at the hearing.

They may be appointed by the Court, having been previously nominated, 1. By the justices in Wales, or Berwick-upon-Tweed, at the hearing by them. 2. By a majority in value of creditors, whose debts shall be admitted in the schedule. 3. By a majority in value of creditors, who shall meet in pursuance of such notice given by advertisement or otherwise, as shall be in each case directed by the Court, or the proper officer for that purpose.

Persons so nominated may apply to be appointed assignees by petition to be filed at the Office of the Court; the nominations of and acceptances by such persons, together with all notices, proceedings, and necessary signatures, being duly proved by affidavit; every such person must also state, by affidavit, whether he has been appointed in any other case; and, if so, whether he has filed his account in such case.—See page 288.

No person can be appointed who is not a creditor; and no person will be appointed who, as assignee in any other case, has failed in any of the duties required of him; nor will any female be appointed.

The insolvent laws extend only to England, and do not include Ireland or Scotland.

#### X. THE LORDS' ACT.

Beside the general Insolvent Act for the relief of all debtors, there are other acts for the relief of a particular class of debtors only: of this description is the LORDS' ACT, the 32 Geo. II. c. 28, which is so called from the circumstance of its originating in the upper house of parliament. By this act, amended by 33 Geo. III. and made perpetual by 39 Geo. III. c. 50, if a defendant *charged in execution* for any debt, not exceeding 300*l.* will surrender all his effects to his creditors (except his apparel, bedding, and tools of his trade, not amounting in the whole to the value of 10*l.*) the prisoner may be discharged, unless the creditor insists on detaining him; in which case he shall allow him 2*s.* 4*d.* a

week, to be paid on the first day of every week, and on failure of regular payment, the prisoner shall be discharged. Yet the creditor may, at any future time, have execution against the lands and goods of such defendant, though never more against his person.

When the prisoner is charged in execution above twenty miles from Westminster-hall, or the Court out of which the execution issued, he must be brought up to the next assize; or, by 52 Geo. III. c. 34, before the justices at quarter-sessions, to be examined and discharged. The application is directed to be made by the prisoner before the end of the first term after his arrest; but ignorance or mistake will excuse a delay beyond that period. When the debt recovered does not exceed 20*l.* exclusive of costs, the 48 Geo. III. c. 123, provides for the discharge of the debtor's person after he has lain in prison twelve months. But this statute being confined to persons in execution upon a judgment, it has been holden that one in custody or on attachment for non-payment of a sum under 20*l.* found due upon an award made a rule of Court, is not entitled to his discharge under it.

To prevent imposition by sheriffs' officers, and others, the 32 Geo. II. provides that no officer shall carry his prisoner to any tavern, or other public-house, without his consent, nor charge him for liquor, or other thing, except such as he shall freely call for, nor demand for caption or attendance any other than his legal fee, nor exact any gratuity-money, nor carry his prisoner to gaol within twenty-four hours after his arrest, unless he shall refuse to be carried to some safe house of his own appointment when arrested, or within three miles thereof.

## PART V.

## CIVIL INJURIES.

WRONGS, as before explained, are of two kinds; *private* wrongs and *public* wrongs: the former are an infringement of the rights of individuals, and termed *civil injuries*; the latter are a violation, not only of the rights of individuals, but of the community, and distinguished by the harsher names of *crimes* and *misdemeanors*. It is the nature of civil injuries that will now engage our attention, reserving crimes and misdemeanors for the concluding Part.

While the number of criminal offences recognised by our laws are numerous, those of a civil nature are comparatively few, and the principal of them may be comprised under the following classification:—

- I. *Libel.*
- II. *Slander.*
- III. *Threats—Assault—Battery—Mayhem—False Imprisonment.*
- IV. *Adultery.*
- V. *Seduction.*
- VI. *Trespass.*
- VII. *Malicious Prosecution.*
- VIII. *Nuisance.*

## CHAP. I.

*Libel.*

**LIBEL** is usually defined a malicious defamation of another, expressed in writing, or printing, or by signs, pictures, and representations; but the term, as latterly expounded in the courts of law, is of much more extensive application. With respect to *individuals*, any thing is deemed a libel which tends to injure their feelings or reputation; and, with respect to the govern-

ment, any thing is libellous that tends to hold it up to hatred, contempt, or dis-esteem.

The remedy for libel is either by *indictment*, by *action*, or *information*; the former for the public offence, as tending to provoke the person libelled to a breach of the peace, which is the same whether the matter of the libel be *true* or *false*; and, therefore, the defendant, on an indictment for libel, is not allowed to allege the truth of it by way of justification. In a civil action, however, a libel must appear to be false as well as scandalous; for, if the *charge be true*, the plaintiff has no ground to demand compensation for himself, whatever offence it may be against the public peace; and, therefore, in a civil action for damages, the truth may be pleaded in bar of the suit. A proceeding by *information* is generally directed against libels on the established religion or government, and is instituted *ex-officio* by the attorney-general. In a criminal information by an individual, the Court will exert a discretionary power in sanctioning such a mode of prosecution; and when the libel contains a direct charge, which it lies in the power of the applicant to deny if false, the Court will require a positive affidavit that the charge is unfounded.

Between libel, or *written scandal*, and mere *verbal* defamation, there is an important distinction, because the former is presumed to be a more deliberate injury, and propagated in a wider and more permanent form. Hence, the word *swindler*, if *spoken* of another, (unless it be spoken in relation to his trade or business,) is not actionable; but if it be published in a *written* form it is actionable, 2 *Hen. Bl.* 531. So the publication of a letter in which the plaintiff was designated "one of the most infernal villains that ever disgraced human nature" was held actionable, without proof of special damage, 1 *Bos. & Pul.* 321.

Printing or writing may be libellous, though the scandal be not directly charged, but obliquely and ironically. So is hanging up or burning in effigy, with intent to expose some person to ridicule and contempt, a libel.

Defamatory writing, expressing only one or two letters of a name, provided the accompanying matter clearly designate an individual, is as properly a libel as if the whole name had been expressed at length.

With respect to publications on the GOVERNMENT, the main question is whether bad motives are imputed to the members of administration, and whether the observations are couched in terms *decent* and *respectful*. The imputation of mere error in judgment, even to the sovereign himself, if done in a respectful manner, is not libellous, 2 *Campb.* 402. Hence it follows that though the tendencies of measures may be temperately discussed, they must never be imputed to *corrupt design*; that no member of the government must be charged with corruption or with a wish to infringe on the liberties of the people.

To publish a full, true, and entire account of proceedings in COURTS OF JUSTICE, upon a trial, or in parliament, is not in general libellous, 8 *T. R.* 298. But a party will not be justified in publishing *conclusions* unfavourable to another, which he draws himself from the evidence delivered in a court of justice, instead of stating the evidence itself, 4 *B. & A.* 605. Nor can a *correct* account of the proceedings in a court of justice be published, if such account contain matter of a scandalous, blasphemous, or criminal tendency; and if it do, it is a ground for a criminal information, 3 *B. & A.* 167. And the publication of the proceedings of a court of law, containing matter defamatory of a person who is neither party to the suit, nor present at the time of the inquiry, seems to amount to a libel. The publication of proceedings before a coroner's inquest, or a preliminary inquiry before a magistrate, however correct the statement, if it contain libellous matter of another, it is actionable, 3 *Chitty's Bl.* 124. It even appears, from the recent case of *Harris v. Wheldon*, that it is an indictable offence to publish at all *ex-parte* proceedings before a magistrate, *Common Pleas*, Dec. 21, 1826.

A court of general gaol delivery has the power to make an order to prohibit the publication of the proceedings, pending a trial likely to continue for several

successive days, and to punish disobedience to such order by fine, *Rex v. Clement*.

Writings reflecting on the memory of the DEAD are punishable, provided it appear the author intended by the publication to hurt the feelings, or to bring dishonour and contempt on the relations of the deceased.

A fair and candid comment on a place of public entertainment, in a newspaper, is not a libel. Nor a comment upon a literary production, exposing its errors and absurdities, and holding up the author to ridicule; provided such comment do not exceed the limits of fair and candid criticism, by attacking the domestic habits of the writer, unconnected with his work. But if a person, under pretence of criticising a literary work, defame the private character of the author, and, instead of fairly discussing its merits, travel into collateral matter, introducing facts not stated in the work, accompanied with injurious comments upon them, such person is a libeller, and liable to an action.

Though *malice* is an essential requisite in every criminal libel, yet the act of publication is deemed presumptive evidence of malice, which the defendant will be required to disprove; and printers and publishers have been repeatedly convicted when it was certain, from absence or otherwise, they were ignorant of the contents of the paper they were assisting to circulate by means of their servants or agents.

A party who pursues an unlawful vocation has no remedy by action for any libellous comments regarding his conduct in such vocation, *Pratt's Dig.* 634.

It is not competent for a man charged with libel to justify by urging that one similar to that for which he is prosecuted was published, on a former occasion, by other persons, who were not prosecuted, *5 T. R.* 436.

The party who writes a libel dictated by another, and has discretion to understand its nature—he who originally procures it to be composed—he who actually composes it—he who prints, or procures it to be printed—he who publishes, or causes it to be published, all, in short, who assist in framing or in diffusing it, are implicated in the guilt of the offence.



## PUBLICATION OF LIBEL.

The communication of a libel to any one person is a publication in the eye of the law; and, therefore, the sending an abusive private letter to a man is as much a libel as if it were openly printed, for it equally tends to a breach of the peace.

If A send a manuscript to the printer of a periodical publication, and do not restrain the printing or publishing of it, and he prints and publishes it in that publication, A is liable as the publisher, 5 *Dow.* 501. But if a libel be stolen, this is no publication.

The delivery of a newspaper to the officer, at the stamp-office, is a publication, 4 *B. & C.* 35.

In a late case it was questioned whether the writing and composing a libel with an *intent* to publish, but not followed by publication, was an indictable offence; at all events, it appears that the finding the paper in the hand-writing of the defendant is such *prima facie* evidence of a publication by him as to admit the writing to be read to the jury, from which the jury may infer the publication according to the circumstances before them, *Rex v. Burdett*, 4 *B. & A.* 95.

The sale of a libel in a shop is evidence of publication in a prosecution against the master, and is sufficient for conviction, unless contradicted by contrary evidence, showing that he was not privy, nor in any degree assenting to it.

By the 32 Geo. III. c. 60, commonly called Mr. Fox's "*Libel Bill*," the functions of juries in trials for libel are more precisely ascertained and discriminated. Prior to this act, it had been frequently determined that the only questions for the consideration of the jury were the *fact* of the publication and the truth of the inuendoes, that is, the *meaning* of the passages of the libel as stated in the record; and the Court alone was competent to determine whether the subject of the publication was or was not a libel. But the 32 Geo. III. provides that, on every trial of an indictment or information for libel, the jury may give a *general verdict* of guilty or not guilty, and shall not be required or directed by the judge

to find the defendant guilty merely on proof of publication, and of the sense ascribed to the libel in the record.

#### PUNISHMENT OF LIBEL.

The punishment for either making, repeating, printing, or publishing a libel is fine, or fine and imprisonment, proportioned to the nature of the offence and the rank of the offender.

When a person is brought up to receive judgment, his conduct subsequent to his conviction may be taken into consideration, either by way of aggravation or mitigation of the punishment.

By the 60 Geo. III. c. 8, on the conviction of any person for the composing, printing, or publishing of any *blasphemous* or *seditious* libel, the Court may order the seizure of all copies of the libel; and the officers are empowered to enter, by force, in the day time, any premises containing copies of the same.

By the same act, persons found guilty a *second* time of printing or publishing any blasphemous or seditious libel, may be banished from all parts of His Majesty's dominions, for any term of years the Court shall think fit, beside being subject to the same punishment as may by law be inflicted in cases of high misdemeanor. Persons found in His Majesty's dominions forty days after sentence of banishment, may be transported for fourteen years.

## CHAP. II.

### *Slander.*

SLANDER consists in maliciously and falsely speaking of another, charging him with the commission of an offence punishable by law, as treason, murder, larceny; or which may exclude him from society, as with having an infectious disease; or which may hurt his trade or livelihood, as to call a tradesman a bankrupt, a physician a quack, or a lawyer a knave.

Words of heat, anger, or passion, spoken without deliberation, as to call a man a rogue, a scoundrel, a villain, fool, or liar, if productive of no evil conse-

quences, are not actionable; neither are words spoken by the defendant, or counsel, if pertinent to the matter in question. The imputation of the mere defect or disregard of moral or religious duties is insufficient to sustain a prosecution, 4 *Taunt.* 355. To call a man a heretic, or adulterer, is cognizable only in a spiritual court, unless temporal damage ensue.

To constitute *legal* slander, some precise crime must be imputed, or real injury sustained. Hence, it is actionable to say a man is a highwayman; but it is not so to say he is *worse* than a highwayman.

To render words actionable, they must be uttered without *legal* occasion. On some occasions, it is justifiable or excusable to utter slander of another, provided it be without malice. So, false and scandalous matter contained in articles of the peace, exhibited to justices; or the declaration of a court-martial, that the charge of the prosecutor was malicious and groundless, is not actionable.

The accusation of a mere *intent*, *propensity*, or *inclination* to commit a crime is not actionable, because it only imputes an inchoate delinquency, and not the actual commission of a crime for which the party accused could be punished. But an accusation of seducing another to commit a crime, as subornation of perjury, is actionable, or of soliciting a servant to steal.

A verbal charge of incontinence against a modest woman is not slander cognizable in the temporal courts, except the City-court; and even there the cause of action must arise within the jurisdiction of the city of London.

But words not actionable in themselves may become so by reason of some special damage arising from them; as if you say to a woman, *You are a whore*, whereby she loses her marriage, or a substantial benefit arising from the hospitality of friends, 1 *Taunt.* 39. So, if a person slander the title of another, whereby he is prevented selling his estate: but, in such cases, it is necessary not only to prove the *uttering* of the words, but the *injury* sustained.

Words which impute the want of integrity or capacity, whether mental or pecuniary, in the conduct of a

*profession, trade, or occupation*, in which the party is engaged, are actionable.

Thus, an action will lie for accusing a clergyman of incontinence, &c. for which he may be deprived; or a barrister, attorney, or artist, of inability, inattention, or want of integrity; or a person *in trade*, of fraudulent or dishonourable conduct, or of being in insolvent circumstances, 5 B. & Cr. 180. And, to say of one who carries on the business of a corn-vender, "You are a rogue and a swindling rascal, you delivered me one hundred bushels of oats worse by 6d. a bushel than I bargained for," is actionable, and entitles to a verdict without proof of special damage. But an action is not sustainable for saying a tradesman has charged an exorbitant price for his goods, unless fraud be imputed. In all these cases the words are actionable without proof of special damage, because they have a direct tendency to injure the party accused.

It is actionable to re-publish any slander invented by another, unless the re-publication be accompanied by a disclosure of the author's name, and precise statement of the author's words, so as to enable the party injured to maintain against the original author.

Words spoken in derogation of a peer, a judge, or other great officer of the Crown, which are called *scandalum magnatum*, are held to be still more heinous, and though they be such as would not be actionable in the case of a common person, yet, in this, they amount to a serious offence. Words, also, tending to scandalize a magistrate, or a person in public trust, are deemed more criminal than in the case of a private man.

### CHAP. III.

#### *Threats—Assault—Battery—Mayhem—False-Imprisonment.*

THE following injuries are such as chiefly affect the personal security of individuals.

1. **THREATS** and menaces of bodily hurt, through fear of which a man's business is interrupted: this is inci-

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pient, though not actual violence, for which compensation may be had by action.

2. ASSAULT, which is an attempt or offer to do a corporal injury to another; as by holding up the fist in a menacing manner; striking with a cane or stick, though the party miss his aim; throwing a bottle or glass, with intent to wound or strike. But, to constitute an assault, there must be an *intention* to use actual violence, coupled with the *ability*; the party aimed at must be within reach of the fist, or the weapon lifted or levelled against him.

3. BATTERY, which also includes assault, is the unlawful beating of another: the least touching of another person in a rude and angry manner is *battery*; every man's person being held sacred, and no one having a right to meddle with it in the slightest degree. But battery is justifiable where the party has authority; as a parent, or master, may give moderate correction to his child, scholar, or apprentice.

4. MAYHEM, or, as it is more correctly written, *maihem*, is an injury more atrocious than the preceding, and consists in violently depriving another of the use of such members as may be useful to him in battle, either to defend himself or to annoy his adversary. Among such defensive members are reckoned not only arms and legs, but a finger, an eye, and a fore-tooth. But the loss of one of the jaw-teeth, the ear, or the nose, is no mayhem at common law, as they can be of no use in personal defence.

The 43 Geo. III. c. 58, makes it felony if any person wilfully and maliciously stab or cut any person with intent to murder, maim, or disfigure them.

And it may be remarked that, for the three personal injuries last mentioned—assault, battery, and mayhem, an indictment may be brought as well as an action; the one at the suit of the Crown for the crime against the public, the other at the suit of the party injured, to obtain a reparation in damages. But, in general, the adoption of both proceedings is considered vexatious, and will induce the jury to give smaller damages in the action. The legislature, too, has discouraged actions for trifling injuries of this nature, by enacting that, in all

actions of trespass for assault and battery, in case the jury should find a verdict for damages under 40*s.* the plaintiff shall have no more costs than damages, unless the judge, at the trial, shall certify that an assault and battery were sufficiently proved.

5. And, lastly, under the head of personal injuries may be ranked FALSE IMPRISONMENT; which consists in the unlawful detention of the person without legal authority. Every species of confinement is an imprisonment, whether it be in a common prison, in a private house, in the stocks, or even by forcibly detaining one in the public streets.

The legal restraint of personal liberty must arise either by process from the courts of justice, or by warrant from a legal officer, having power to commit under his hand and seal, and expressing the cause of committal; or from some special power, warranted either by the common law or act of parliament; such as the power of a private person, without warrant, to arrest felons or apprehend vagrants.

False imprisonment, however, may arise from executing a legal process at an improper time; as by arresting in a civil suit on Sunday. The circumstance of an imprisonment being committed under a mistake, constitutes no excuse, 3 *Wils.* 309.

## CHAP. IV.

### *Adultery.*

DURING the commonwealth, in the year 1650, adultery was made a capital crime, and several attempts have been subsequently made to bring it within the pale of criminal jurisdiction, but without effect. Adultery, therefore, continues to be considered merely a civil injury, and the only remedy which the law affords is an action, whereby the husband may recover against the adulterer a compensation in damages for the loss of the *society* and *assistance* of his wife in consequence of the adultery.

The damages in cases of *crim. con.* depend on the rank and quality of the plaintiff; the condition of the defen-

dant—his being a friend, relation, or dependant of the plaintiff; the nature of the seduction, as founded on the previous behaviour of the wife, and her character; and the husband's obligation, by settlement, or otherwise, to provide for the children, which he cannot but suspect to be spurious.

To enable the husband to maintain his action, there must be no imputation of his having courted his own dishonour, or of his having been instrumental to his own disgrace. So, if the wife be suffered to live as a prostitute with the privity of the husband, and the defendant has thereby been drawn in to commit the act of which the husband complains, the action cannot be maintained.

If the husband live separate from his wife, in consequence of mutual agreement, in which he gives up all claim to be derived from her *society*, he is not entitled to maintain an action for her seduction.

Lord Kenyon held that where a husband kept a mistress, he was not entitled to maintain an action for adultery; but in a subsequent case, of *Bromley v. Wallace*, 4 *Esp.* 237, Lord Alvanley was of opinion that, unless the husband live so much with other women as amounts to a total abandonment of his wife, it is only a circumstance which affects the damages.

The EVIDENCE of the fact of adultery, which, from its nature, is usually circumstantial, must be sufficient to satisfy the jury that an adulterous intercourse has actually taken place. Proof of familiarities, however indecent, is insufficient, if there be reason to apprehend, from the fact of the parties being interrupted, or any other circumstance, that a criminal connexion has not occurred. The confession of the wife will be no evidence against the defendant, *Bull*, N. P. 28; but a discourse between the wife and defendant is evidence; as, also, are letters written by the defendant to the wife.

The defendant may show, in mitigation of damages, that the wife had before eloped, or had been connected with others; that she had borne a bastard before marriage; that she had been a prostitute previous to her connexion with the defendant; but he cannot give evi-

dence of the general reputation of her being or having been a prostitute, for that may have been occasioned by her familiarity with him. For the same purpose, he may, also, give in evidence that she was a woman of loose conduct, and notoriously bad character, that she made the first overtures and advances to the defendant, that his means and expectations are inconsiderable.

It may be further urged that the husband carried on a criminal correspondence with other women in an open and undisguised manner; or that he treated his wife harshly and unkindly; or that they did not live happily together.

## CHAP. V.

### *Seduction—Forcible Marriage—Abduction.*

THE laws of England have failed to provide any direct punishment for *seduction*, either as a civil or criminal offence.

Unless a woman has had a promise of marriage, she cannot obtain any reparation for the injury she has sustained from her seducer: and even when imposed upon by the most solemn promises of marriage, unless they have been *overheard* or made *in writing*, she cannot recover any compensation, being incapable of giving evidence in her own cause.

It is only by a fiction of law, the supposed and less endearing relation of master and servant, and consequent loss of service the parent has sustained, in consequence of the pregnancy of his daughter, that he can maintain an action against the seducer, for the wrong done to his family.

The action may be, also, brought by a relative, a master, or any one under whose protection a female resides; the *loss of service* being the legal principle on which it rests; and, therefore, it has been extended even to the case of one suing for the seduction of his adopted child.

The damages, as in actions for adultery, are proportioned to the previous character of the female, and the rank and situation of the plaintiff and defendant: and as the female in a prosecution, by a parent or guardian, is not supposed to receive any part of the damages, she



is a competent witness on the trial, and is usually brought forward to prove the fact of seduction. The state and situation of the family should be proved in aggravation of damages, and, if such be the fact, that the defendant professed to visit the family and was received as the suitor of the daughter. The defendant may, in mitigation of damages, adduce any evidence of the improper, negligent, or imprudent conduct of the plaintiff himself; as, where he knew that defendant was a married man, and allowed his visits in the probability of a divorce, Lord Kenyon held the action could not be maintained, *Peuke*, R. 240.

Though the law affords such slender protection for the chastity of females, it has been cautious in protecting their property from any who may seek to obtain possession of it by FORCIBLE MARRIAGE, which is a criminal and capital offence; and though it does not properly fall under the head of civil injuries, may be shortly mentioned.

By 3 Hen. VII. c. 2, it is enacted that if any person shall, for *lucre*, take any woman, being maid, widow, or wife, and having substance either in goods or lands, being heir apparent to her ancestors, contrary to her will; and afterwards she be married to such misdoer, or by his consent, to another, or defiled; such person, his procurors and abettors, and such as knowingly receive such woman, shall be deemed principal felons: and, by 39 Eliz. c. 9, such felons are denied the benefit of clergy.

But, by the 1 Geo. IV. c. 115, the act of Elizabeth is repealed, and persons convicted upon 3 Hen. VII. are to be transported for life, or any term not less than seven years; or imprisoned, with or without hard labour, for any term not exceeding seven years.

By 4 & 5 P. & M. c. 8, the ABDUCTION of any female, unattended with force, within the age of *sixteen years*, from the care of her parents or guardian, is punishable by two years' imprisonment; and if the offender deflower such maid or female, or, without the consent of parents, contract matrimony with her, he shall be imprisoned five years, or fined, at the discretion of the judges.

## CHAP. VI.

*Trespass.*

TRESPASS is, generally, any act whereby another is injured in person or property; but, in a more limited and common acceptance, it signifies an entry upon another man's ground without his permission, especially if contrary to his order, and doing some damage, however inconsiderable, for which a compensation is recoverable, according as the intent of the trespasser was wilful or inadvertent, and the damage actually sustained.

Every man's ground, in the eye of the law, is enclosed either by a visible fence, or imaginary boundary line, and whoever enters upon it, without leave of the owner, is a trespasser.

But a person is answerable not only for his own trespass, but that of his cattle; for if, by negligent keeping, they stray upon the land of another and tread down the herbage, or other injury, this is a trespass for which the owner must answer in damages.

In some cases, trespass is justifiable; as if one come to demand or pay money, there payable or due; or to execute, in a legal manner, the process of law. Also, a man may justify entering into an inn, or public-house, without leave of the owner, because when a man professes to keep such accommodation he gives a general license to any person to enter his doors. So, a landlord may justify entering to distrain for rent; a commoner to attend his cattle commoning on another's land; and a reversioner to see if any waste be committed on the estate.

But in cases where a man misbehaves himself, or abuses the authority with which the law invests him, he becomes a trespasser; as if a person come into a tavern, and will not go out in a reasonable time, but stays there all night, contrary to the inclination of the owner, he makes himself a trespasser from his first entry.

An exclusive interest in the crop or herbage, without

a property in the soil, is sufficient to maintain an action of trespass. But possession, actual or constructive, must be proved, *Pratt's Dig.* 945. If trees are excepted in the lease, the land whereon they grow is necessarily excepted also; consequently, the landlord may maintain trespass *for breaking his close* if the tenant cut down the trees.

#### TRESPASSES IN SPORTING.

The common law allows the hunting of foxes, badgers, and such noxious animals, over the ground of another man for the public good, and excuses a trespass done in the pursuit of them; provided, in doing this, no more damage is done than is necessary and inevitable, and that it is done in the usual and ordinary manner. But the law will not justify any excessive damage to the land; for, even in hunting the fox or badger, a man must not break the ground or dig for him.

In general, it is a trespass at common law for any man to hunt over another's ground, for which the owner or tenant may maintain his action. No lord of a manor can justify sporting over another's ground in an unlawful manner, unless he have grant of free-warren over such man's ground. And it seems doubtful, after the decision of Lord Ellenborough, in the *Earl of Essex v. Copel*, Hertford assizes, A. D. 1809, whether the hunting of a fox over the grounds of another, without leave of the owner, is not a trespass; at all events, to unbag a fox, and pursue him over another's ground would be a trespass.

In an action of trespass for sporting over the ground of another, the jury may take into consideration, in determining the verdict, not only the actual damage sustained by the plaintiff, but circumstances of aggravation and insult on the part of the defendant. Thus, in *Merrest v. Harvey*, where the defendant, a magistrate, had committed the trespass before the plaintiff's face, in defiance of notice that he was a trespasser, and had accompanied it by every kind of insult, a verdict was given for 500*l.* damages, and the Court of Common Pleas, on a motion for a new trial, refused to reduce

them, though the plaintiff had sustained no actual pecuniary injury, 5 *Taunt.* 442.

But to prevent trifling and vexatious actions of trespass, it is provided by statute that, where the jury who try an action of trespass give *less damage than 40s.* the plaintiff shall be allowed no more costs than damages.

But, to this rule two exceptions have been made by subsequent statutes. The 8 & 9 W. III. c. 11, enacts that in *all* actions of trespass, when it appears that the trespass was *wilful* and *malicious*, and it is so certified by the judge on the back of the record, the plaintiff shall recover *full costs*. And, by the 4 & 5 W. & M. c. 23, full costs may be had against any *inferior tradesman*, apprentice, or other *dissolute* person, who is convicted of trespass in hawking, hunting, fishing, or fowling, upon another's ground, though the damages be *under 40s.* and without any certificate of the Court.

What is meant by "*inferior tradesman*" is not clear; a clothier, cutler, or shopkeeper, undoubtedly is such; but the Common Pleas were divided in opinion whether a person who was a surgeon and apothecary came under that designation, 2 *Wils.* 70. It has been decided, however, that a gentleman's huntsman is not a *dissolute* person under this act.

In conclusion, every trespass is *wilful* where the defendant has notice, and is forewarned not to come upon the land, as every trespass is *malicious* where the intent of the defendant plainly appears to be to harass and distress the plaintiff; and, in such cases, the judge is bound by statute to certify accordingly: which entitles the plaintiff to FULL COSTS, whatever may be the amount of damage, or the rank and qualification of the defendant.

## CHAP. VII.

### *Malicious Prosecution.*

A PERSON may be severely injured in his person, property, or reputation, by preferring malicious indictments or prosecutions against him, and for which there

is no ground but the malice or knavery of the plaintiff : the remedy for this species of injury is by an action on the case.

The grounds of an action for a malicious prosecution are the falsehood of the charge, the malice of the defendant, either express or implied ; want of probable cause, and the injury sustained by the plaintiff, by reason of the malicious prosecution, either in his person by imprisonment, his reputation by the scandal, or in his property by the expense.

Although it is not actionable to commence a civil suit, without just cause, since it is a mere claim of right ; and the defendant, in case of a nonsuit or verdict against the plaintiff, is entitled to costs ; yet the law allows an action to be maintained for maliciously arresting or holding a party to bail, either where there is not any debt due, or where the party is held to bail for a larger sum than is justly due.

By 43 Geo. III. c. 46, if the plaintiff in an action do not recover the amount of the sum for which he arrested the defendant, though he obtain a verdict, the defendant is entitled to his costs, if it appear to the satisfaction of the Court, upon a summary application, supported by affidavit, that plaintiff had not reasonable cause for arresting the defendant for the *whole* amount.

A plaintiff is bound to accept from a defendant in custody the debt and costs, when tendered in satisfaction of his debt, and to sign an authority to the sheriff to discharge the defendant out of custody ; and an action on the case will lie against a plaintiff for having maliciously refused so to do. And the refusal to sign the discharge is sufficient evidence of malice in the absence of circumstances to rebut the presumption.

An action will lie for maliciously suing out a commission of bankruptcy which is superseded, and this notwithstanding the specific remedy provided under the bankrupt laws.

Where there is *reasonable* ground for prosecution, and no malice appear, an action is not maintainable. So, a captain in the navy was accused by his superior of neglect of duty, and having been tried by a court-martial, was

honourably acquitted; in this case, it was held an action for malicious prosecution could not be maintained, *Sutton v. Johnston*, 1 T. R. 493. But an action lies for an inferior against his superior military officer (both being under martial law), who imprisons him for disobedience to an order made under *colour*, but not within the scope of military authority, although the imprisonment be followed by a trial by court-martial, 4 *Tawnt.* 57.

Where two or more persons combine to prefer an indictment, charging any one without foundation, or otherwise conspiring to injure an individual, an *action of conspiracy* may be brought for compensation in damages.

As prosecutions for *criminal* offences are for the benefit of the public, and no one would be induced to pursue an offender for a criminal charge if he were liable to an action on an acquittal, the courts in general discharge actions for malicious prosecution, unless the malice of the prosecutor, as well as the innocence of the party accused, be obvious; and, in case of *felonies*, they will not afford the defendant a copy of the indictment, without which a civil action cannot be supported, unless, in the opinion of the Court, the prosecution appear to have been malicious.

But, in action for a malicious prosecution for a *misdemeanor*, the party need not produce a copy of the indictment.

## CHAP. VIII.

### *Nuisance.*

PRIVATE nuisance, as distinguished from a common or public nuisance, which falls under the class of criminal offences, may be defined an injury or annoyance to the person or property of an individual.

If a man build a house so near to mine that his roof overhang my roof, and throws the water off his roof upon mine, this is a private nuisance, for which an action will lie. Likewise, to erect a house or other building so near mine that it obstructs my light and windows is a nuisance. But in this case it is necessary

the windows be *ancient*, that is, have subsisted there a long time without interruption, otherwise there is no remedy. An uninterrupted enjoyment for twenty years is now sufficient to support an action on the case for the disturbance of it. But a right thus acquired must be limited in degree by the *use made of it*; a person by the use of a *portion* of a stream for twenty years does not thereby acquire a right to the use of the *whole*, or any quantity larger than that proportion; or by the enjoyment of light and air through a small window to the same enjoyment through one of larger size.

If an ancient window has been completely blocked up above twenty years it loses its privilege, 3 *Campb.* 514; and even the presumption of right from twenty years' uninterrupted enjoyment is excluded by the custom of London, which entitles every citizen to build upon an ancient foundation as high as he pleases.

If I have, by prescription or otherwise, a right of *way* annexed to my estate across another's land, and he obstruct me in the use of it, either by totally stopping it, or putting logs across it, or ploughing over it, it is a nuisance; for, in the first case, I cannot enjoy my right at all, and in the latter, I cannot enjoy it so commodiously as I ought to do.

To keep hogs near ones house, or to exercise any offensive trade, as a tanner, a tallow-chandler, a soap-boiler, or the like, are all nuisances for which an individual has remedy by action.

So, also, it is a nuisance if life be made uncomfortable by the apprehension of *danger*, as by keeping great quantities of gunpowder near dwelling houses, 2 *Str.* 1167. And, in the *Duke of Northumberland v. Clowes*, A. D. 1824, where defendant employed a steam-engine in his business, as a printer, which produced a continual noise and vibration in the plaintiff's apartment, which adjoined the premises of the defendant, it was held a nuisance. A verdict on similar principles was given in *Watson v. Clement*. T. T. 1826.

It is a nuisance to erect a smelting-house for lead so near the land of another that the vapour or smoke kills or injures his corn or grass. It is a nuisance to

stop or divert water that runs to another's meadow or mill ; to corrupt or poison a water-course ; erecting a dye-house or lime-pit in the upper part of the stream ; or, in short, to do any act that tends to the prejudice of a neighbour.

But depriving one of a mere matter of *pleasure*, as of a fine prospect, by building a wall or the like, this, as it abridges nothing really necessary or convenient, is not an injury for which there is a remedy at law.

If I am entitled to hold a *fair* or *market*, and another person sets up a fair or market so near mine that he does me a prejudice, it is a nuisance to the freehold which I have in my market or fair.

But, in order to make this out to be a nuisance, it is necessary, 1. That my market or fair be the elder, otherwise the nuisance lies at my own door. 2. That the new market be erected within the third part of twenty miles from mine. For Sir Matthew Hale construes the *reasonable day's journey*, mentioned by Bracton, to be twenty miles. So that if the new market be not within seven miles of the old one, it is no nuisance ; for it is held reasonable that every man should have a market within one-third of a day's journey from his home ; that, the day being divided into three parts, he may spend one part in going, another in returning, and a third in transacting his necessary business there.

If a ferry be erected on a river so near another *ancient* ferry as to draw away its custom, it is a nuisance to the old one ; for where there is a ferry by *prescription*, the owner is bound to keep it always in repair and readiness ; it would, therefore, be hard if another ferry were to share the profits which does not share the obligation.

But where there is no *prescriptive* right there can be no exclusive privilege. So, it is no nuisance to erect a mill so near mine as to draw away the custom, unless the miller also intercept the water. Neither is it a nuisance to set up any trade or school in a neighbourhood in rivalry with another ; for, by such competition, the public is benefited ; or if the new mill or school occasion a damage to the old one, it is a loss without a remedy.



## PART VI.

## CRIMES AND MISDEMEANORS.

WE have now arrived at the last and more important division of our subject, embracing the consideration of those higher delinquencies which, from their more dangerous influence on the well-being of the community, are made the subject of penal visitation. For the repression of private injuries the law has provided only retribution or compensation in damages ; but such atonement would be an inadequate and disproportionate check on offences which endanger the person and life, as well as the property, of individuals : except, however, in their greater enormity, and the different mode of procedure, there is no substantive distinction between public and private wrongs. Every private offence, when openly committed, is, in some degree, a crime against the public, by its evil example and tendency to endanger those interests on which social happiness depends ; and, consequently, the classification of offences into private injuries, misdemeanors, and crimes, refers only to a gradation of criminality ; the first of which is adequately restrained by individual prosecution, the latter requiring the strong arm of the magistrate and the terror of a more public and ignominious punishment.

During the last session of parliament, important changes were made in the criminal law, which it will be proper to notice, and also to premise a few observations, explanatory of the different classes of offences and offenders, the limits of criminal responsibility, and the expenses attending the prosecution of justice.

The new criminal acts introduced by Mr. Peel, are five in number, and the whole came into operation July the 1st, 1827. The *first* act, the 7 & 8 Geo. IV. c. 27, is simply a repealing act, and repeals the various statutes and parts of statutes for which the new legislation is substituted ; the number of statutes, wholly or partially repealed, and in lieu of which

the four remaining acts have been passed, amount to 136 Of the four acts, the 7 & 8 Geo. IV. c. 28, abolishes certain forms in criminal trials, which had heretofore impeded the administration of justice — takes away the benefit of clergy—regulates the peremptory challenge of jurors—defines more strictly the nature of capital felonies—makes better provisions for the punishment of felons, convicted a second time—and, lastly, gives a rule for the interpretation of criminal statutes, by which the evils may be avoided, resulting from the distinction of sex, number, individual and corporate bodies, not being sufficiently discriminated in the language of acts of parliament.

The *third* act, the 7 & 8 Geo. IV. c. 29, consolidates and amends the laws relative to larceny, and the offences connected therewith; abolishes the distinction of grand and petty larceny—augments the sum for which stealing in a dwelling-house is rendered a capital offence—and more accurately defines the nature of burglary, house-breaking, and some other delinquencies.

The *fourth* act, the 7 & 8 Geo. IV. c. 30, refers to the laws relative to malicious injuries to property; including the various offences committed in setting fire to buildings, the destruction of machinery, floodgates, mines, and manufactures; the damaging of ships, sea-banks, canals, and bridges; the killing and maiming of cattle; the destroying of fences, walls, stiles, and hop-binds, and the injuring of trees, shrubs, and vegetable productions.

The *last* act, the 7 & 8 Geo. IV. c. 31, consolidates the laws and regulates the procedure in actions against the hundred for compensation for damages committed by riotous and tumultuous assemblies.

Some of the provisions of the New Acts have been already noticed in the former parts of the present edition of this work, and the remaining provisions will be incorporated in their proper place, in the following exposition of the criminal law, and in the subjoined explanations.

### *Explanations.*

#### I. CRIMES, FELONIES, AND MISDEMEANORS.

*Crime* is a violation or disregard of some public law;

and in its more general sense embraces every species of delinquency cognizable by the civil magistrate, but it is usually applied to those offences which amount to felony.

*Felony* comprehends the higher class of offences, as murder, rape, burglary, and arson, and may be either capital or not. Capital felonies are punishable with loss of life, forfeiture of land or goods, and, if they amount to the degree of treason, or murder, by corruption of blood, so as to disqualify the felon from inheriting property or transmitting property to his posterity. But the 7 & 8 Geo. IV. c. 28, provides, that no felony shall be *capital*, unless such felony was excluded from the benefit of clergy, on or before the first day of the last session of parliament, (Feb. 8, 1827,) or which is made punishable with death by a subsequent statute. It also provides that the jury, in indictments for treason or felony, shall not be charged to inquire concerning the land or goods of the felon or whether he fled for the offence.

Felonies not capital are punishable with transportation for a term of years or imprisonment; to which imprisonment, subject to the discretion of the court, public or private whipping may be added, unless the offender be a female. On a second conviction for a minor felony, the offender may be *transported for life*, or not less than seven years, or imprisoned, with or without whipping, for four years.

Private persons may arrest felons by warrant from a justice of peace, or even by their own authority, and are bound to assist a peace officer in taking them into custody.

*Misdemeanor* is generally used in contradistinction to felony, and comprehends all indictable offences which do not amount to felony; as perjury, battery, libels, conspiracies, attempts and solicitations to commit felonies, and various injuries to property from a spirit of wantonness and revenge. The punishment of misdemeanor is transportation, fine or imprisonment, or both; to which last hard labour, solitary confinement, or whipping may, in many cases, be added.

*Crime* is the generic term for treasons, felonies, and misdemeanors, and the last is only used to discriminate offences of a less hurtful and atrocious character.

## II. RESPONSIBILITY FOR CRIMES.

Certain persons, from age, natural infirmity, or want of freedom of will, are deemed incapable of committing crimes, and are exempt by the law from criminal responsibility.

An *infant* under the age of seven years cannot be guilty of felony; above the age of seven, if it appear that he has capacity to discern between good and evil, he is capable of guilt according to his discernment: but the presumption continues in favour of his innocence till he attain the age of fourteen, at which period he is, as to the commission of crimes, supposed to have attained discretion, and his actions are subject to the same responsibility as the rest of society.

*Idiots* and *lunatics* are not chargeable for their own acts, if committed when under these incapacities, not even for treason itself. But he who is guilty of a crime through voluntary drunkenness, may be punished for it as much as if he were sober; and he who causes a madman to commit a crime, is a principal offender, and as liable as if he had done it himself.

With respect to a *lunatic*, the 39 & 40 Geo. III. c. 94, has provided for the different cases in which he may appear before a jury, both where it is in evidence that he was insane at the time of committing the act charged upon him, and where he shall appear so at the time of arraignment or of trial. In the first case, the jury, instead of a general verdict of acquittal, are directed to find his insanity specially, and whether they acquit him on that ground. In the latter case, a jury shall be empannelled for the purpose of trying whether the prisoner be lunatic or otherwise at that time. If the verdict, in either case, establish the insanity, the prisoner must be kept in strict custody till the king's pleasure be known for the future disposal of him.

If a *woman* commit theft, burglary, or robbery, by the coercion of her husband, or even in his company, which presumes coercion, she is not guilty of any crime: but these exceptions do not extend to treason, murder, or manslaughter. And in all misdemeanors, the wife may be found guilty with the husband.

Persons committing crimes by casualty or misfortune,

by ignorance or mistake of fact, *not of law*, by compulsion or necessity, are not punishable; but each of these circumstances, ignorance, necessity, or infirmity, must be strictly and satisfactorily made out by the party, who relies on them for his justification.

### III. PRINCIPAL AND ACCESSORY.

All persons committing crimes are considered either as *principals* or *accessories*.

A *principal* is either the actual perpetrator of the crime, or one who is present, or in the immediate vicinity, aiding and assisting the perpetrators.

An *accessory* is one guilty of an offence not principally, but by participation; as by advice, command, or concealment; and which may be either *before* or *after* the fact committed.

An accessory *before* the fact is one who, being absent at the time of the crime committed, procures or counsels another to commit a crime; and it is an offence greater than the accessory *after*; and, therefore, in many cases, as in petit-treason, murder, robbery, and wilful burning, benefit of clergy was taken away from accessories *before*, and allowed *after* the fact.

An accessory *after* the fact is where a person, knowing a felony to have been committed, receives or assists the felon. And, generally, any assistance whatever given to a felon, to hinder his being apprehended, tried, or suffering punishment, makes the assister an accessory; as furnishing him with a horse to make his escape, or conveying instruments to him to break gaol, or to bribe the gaoler to let him escape, makes an accessory to the felony. But this does not extend to a woman who receives or assists her husband, though a husband receiving his wife will be accessory: and, in general, the nearest relations assisting each other after a felony is completed makes them accessories.

By the 7 & 8 Geo. IV. c. 29, every accessory *before* the fact to any felony there mentioned is made punishable with death, or otherwise, in the same manner as the principal felon; and every accessory *after* the fact to any felony (except only a receiver of stolen property) is liable to be imprisoned for any term not exceeding

two years. Persons aiding or abetting the commission of any misdemeanor are punishable as principal offenders. And, by the 7 Geo. IV. c. 64, an accessory before the fact to any felony may be tried as such, or as a substantive felon, whether the principal felon shall or shall not have been previously convicted, by any court which has jurisdiction to try the principal felon, although the offence be committed on the seas or in any part within His Majesty's dominions.

The 7 Geo. IV. c. 64, provides that all accessories, whether *before* or *after* the fact, may be prosecuted after the conviction of the principal, although the principal shall die, or be admitted to the benefit of clergy, or be pardoned, or otherwise delivered before attainder.

Receivers of stolen goods are accessories, and if the original offence amount to felony, they may, by the 7 & 8 Geo. IV. c. 29, be transported for fourteen years; or, if it amount only to a misdemeanor be transported for seven years, or imprisoned, with or without whipping, for two years.

In high-treason there are no accessories, but all are principals; so, also, in simple larceny, and all other crimes under the degree of felony.

#### IV. EXPENSES OF CRIMINAL PROSECUTION.

Until the 7 Geo. IV. c. 64, entitled an *Act for Improving the Administration of Criminal Justice*, the judges had only power to allow the expenses of prosecutors in cases of felony; while those who prosecuted for misdemeanors, in which they often sustained equal hardship, and conferred equal benefit on the community, had to bear their own charges. This inconsistency is removed by the 7 Geo. IV. which empowers the Court to order the payment of the expenses of prosecutors and witnesses in indictments for any assault with intent to commit a felony; of any attempt to commit a felony; of any riot; of any misdemeanor for receiving stolen property knowing it to have been stolen; of any assault upon a peace-officer in the execution of his duty, or upon any person acting in aid of such officer; of any neglect or breach of duty as a peace-officer; of any assault com-

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mitted in pursuance of any conspiracy to raise the rate of wages; of knowingly obtaining property by false pretences; of wilful and indecent exposure of the person; of wilful and corrupt perjury, and subornation of perjury.

Persons attending the Court under recognizance, even when no bill is preferred, are allowed their expenses, both in felony and misdemeanor.

Such order for expenses is to be delivered by the proper officer of the Court, to the prosecutor, on the payment of 1s. and to any other person entitled thereto, on the payment of 6d.

The 28th section of the same act allows the Court to grant compensation to persons who have been active in the apprehension of offenders charged with murder, burglary, arson, rape, sheep-stealing, horse-stealing, poisoning, or administering any thing to procure miscarriage.—See *Apprehension of Felons*, in the DICTIONARY.

### CHAP. I.

#### *Offences against Religion and Public Morals.*

THE several offences, either directly or by consequence, injurious to society, and punishable by the laws of England, may be distributed under the following heads.

*First*, those which are more immediately hurtful to religion and public morals; *secondly*, such as violate the laws of nations; *thirdly*, such as more especially affect the government of the state; *fourthly*, such as more directly endanger the public interest and prosperity, as offences against public justice, trade, health, and police; and, *lastly*, such as derogate from the rights and enjoyments of individuals, and in the preservation and vindication of which the community is interested. The offences under the first division will occupy the present chapter, and be distributed under the following heads:—

- I. *Apostacy.*
- II. *Heresy.*

- III. *Reviling the Ordinances of the Church.*
- IV. *Nonconformity.*
- V. *Blasphemy.*
- VI. *Cursing and Swearing.*
- VII. *Simony.*
- VIII. *Profanation of the Sabbath.*
- IX. *Witchcraft and Religious Imposture.*
- X. *Drunkenness, Lewdness, and Bastardy.*
- XI. *Buying and Selling of Wives.*

## I. APOSTACY.

This offence can only take place in such as have once professed the true religion, and consists of a total renunciation of Christianity, by embracing either a false religion or no religion at all. By the 9 & 10 W. III. c. 32, if any person educated in or having made profession of the Christian religion shall, by writing, printing, teaching, or advised speaking, deny the Christian religion to be true, or the Holy Scriptures to be of divine authority, he shall, upon the *first* offence, be rendered incapable to hold any office or place of trust; and, for the *second*, be rendered incapable of bringing any action, being guardian, executor, legatee, or purchaser of lands, and suffer three years' imprisonment, without bail. To give room, however, for repentance, if, within four months after the first conviction, the delinquent will, in open Court, publicly renounce his error, he is discharged for that *once* from all disabilities.

## II. HERESY,

Which consists not in the total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. By 9 & 10 W. III. c. 32, if any person educated in the Christian religion, or professing the same, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons of the Holy Trinity to be God, or maintain that there be more gods than one, he shall suffer the same penalties as described in the case of *Apostacy*.

But this statute has been repealed, so far as it affects Unitarians only, by the 53 Geo. III. c. 100. Pro-



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secutions for reviling the Trinity seem to have been generally framed on the construction of the common law; the 9 & 10 W. III. did not alter the common law as to the offence of blasphemy, but only gave a commutative punishment. And it seems, also, the 55 Geo. III. does not alter the common law, but only removes the penalties imposed upon persons denying the Trinity, by 9 & 10 W. III. c. 32, and extends to such persons the benefits conferred upon all other Protestant Dissenters, by 1 W. & M. c. 18, *Rex v. Waddington*, 1 B. & C. 26.

### III. REVILING THE CHURCH ORDINANCES.

By 1 Ed. VI. & 1 Eliz. c. 1, it is provided, that whoever reviles the sacrament of the Lord's Supper shall be punished by fine and imprisonment. By the 1 Eliz. c. 2, if any minister speak any thing in derogation of the Book of Common Prayer, he shall, if not beneficed, be imprisoned one year for the *first* offence, and for life for the *second*: and if he be beneficed, he shall, for the first offence, be imprisoned six months, and forfeit a year's value of his benefice; for the *second* offence, he shall be deprived, and suffer one year's imprisonment; and for the *third*, he shall be deprived and imprisoned for life.

And if any person whatever shall, in *plays, songs*, or other *open words*, speak any thing in derogation of the Book of Common Prayer, or shall forcibly prevent the reading of it, or cause any other service to be read in its stead, he shall forfeit, for the *first* offence, 100 marks; for the *second*, 400; and for the *third*, shall forfeit all his goods and chattels, and be imprisoned for life.

Of these statutes, however, the 1 Eliz. c. 2, is repealed, so far as it affects Protestant Dissenters, by 31 Geo. III. c. 32.

### IV. NONCONFORMITY.

Non-conformists are of two sorts. *First*, such as absent themselves from divine worship in the established church, through total irreligion, and attend the service of no other persuasion; these, by the 1 Eliz. and 3 Jac. I.

forfeit *one shilling* to the poor, every Lord's day they so absent themselves, and 20*l.* to the king, if they continue such absence for a month together. And if they keep an inmate thus irreligiously disposed in their houses, they forfeit 10*l.* per month. Protestant Dissenters are specially exempt from these penalties, by the Toleration Act, 1 W. & M. c. 18, and Roman Catholics, by 31 Geo. III. c. 52.

The *second* description of non-conformists are Protestant Dissenters and Roman Catholics; for the laws still in force respecting these, see page 186.

#### V. BLASPHEMY

Consists in denying the being and providence of God, or in uttering contumelious reproaches of Jesus Christ, or in profane scoffing at the Holy Scriptures, or exposing them to contempt and ridicule; these offences are punishable by fine and imprisonment, or other infamous corporal infliction.

It is not lawful even to publish a *correct* account of the proceedings in a court of justice, if it contain matter of a scandalous, blasphemous, or indecent nature, 3 B. & A. 167; and a publication stating Jesus Christ to be an impostor, and a murderer in principle, is a libel at common law, 1 B. & C. 26.

The general law as to this offence, as collected from 2 Stra. 834, Fitzg. 64, Barn. R. 162, is, that it is illegal to write against Christianity in general; that it is also illegal to write against any one of its evidences or doctrines, so as to manifest a *malicious* design to undermine it altogether; but that it is not illegal to write with decency on controverted points, whereby it is possible some articles of belief may be affected.

Where the blasphemy is contained in any libel, and the offender has been once convicted of the offence, he may, on a *second* conviction, be banished from all parts of His Majesty's dominions, for such term of years as the Court shall think proper. If he shall not depart from the United Kingdom within thirty days after sentence, he may be conveyed to such part out of the king's dominions as the king, with the advice of his privy council, may direct.—See *Libel*, p. 303.

## VI. CURSING AND SWEARING.

By the 19 Geo. II. c. 21, every labourer, soldier, or sailor, profanely cursing or swearing, forfeits 1s.; every other person under the degree of a gentleman, 2s.; and every gentleman, or person of superior rank, 5s. to the poor of the parish: on the second conviction, double; for every subsequent offence, treble the sum first forfeited, with all charges of conviction; and in default of payment may be sent to the House of Correction for ten days: or where a common sailor or soldier, upon conviction, is unable to pay the penalty, he may be set in the stocks for one hour for every offence.

The section of this statute requiring it to be read in all parish churches, four times a year, is repealed by the 4 Geo. IV. c. 31.

By 3 Jac. I. c. 21, it is provided that if, in any stage-play, interlude, or show, the name of the Holy Trinity, or any person therein, be jestingly or profanely used, the offender shall forfeit 10*l.* half to the king, and half to the informer.

## VII. SIMONY,

Or the sale of spiritual preferment, is the corrupt presentation to an ecclesiastical benefice for reward, gift, profit, or benefit. This is not an offence punishable, in a criminal way, at common law; but, by 31 Eliz. c. 6, it is provided, if any patron, for money, or other profitable consideration, or promise, present to any ecclesiastical benefice, or dignity, both the giver and taker forfeit two years' value of the benefice or dignity; one moiety to the king, and the other to the person who sues for the same. Corrupt elections and resignations in colleges, hospitals, and other eleemosynary corporations, are punishable with forfeiture of double the value, vacating the place or office, and the lapse of the right of election, for that turn, to the Crown.

Though to purchase a *presentation*, the living being actually vacant, is undoubtedly simony, Lord Hardwicke held that the *sale of an advowson*, during a vacancy, is not within the statute: and it has been decided, though with a difference of opinion, that a bond

to resign a school or freehold office, at the request of the patron, is valid.

In the recent great case of *Fletcher v. Lord Sondes*, on appeal to the House of Lords, it was decided, after elaborate argument, that a bond entered into by a parson to resign a living, in order that a particular person may, at a future period, be presented, is simoniacal and illegal. Seven of the judges, after twelve months' deliberation, were for the affirmative of this point, three for the negative, and two, Mr. Justice Bayley and Mr. Justice Littledale, could not make up their minds either way. But, to save many persons from the penalties and forfeitures to which they would be liable under this decision, the Archbishop of Canterbury introduced the 7 & 8 Geo. IV. c. 25, by which all similar transactions up to the day of the judgment in the Lords (*April 9, 1827*) are protected.

#### VIII. PROFANATION OF THE SABBATH.

By 27 Hen. VII. c. 5, no fair or market shall be held on the principal festivals, Good Friday, or Sunday, except the four Sundays in harvest, on pain of forfeiting the goods exposed to sale. By 1 Car. I. c. 1, no persons shall assemble out of their parishes for any sport on Sunday, nor in their parishes use any bull or bear baiting, interlude, play, or other unlawful exercise, or pastime: penalty, 3s. 4d. to the poor.

By 29 Car. II. c. 7, no person, on pain of forfeiting 5s. is allowed to *work* on the Lord's day (except works of necessity or charity), nor use any boat or barge, or expose any goods to sale, except meat in public-houses, or milk and mackarel, at certain hours. Milk may be sold before nine in the morning, and after four in the afternoon. Mackarel may be sold *before* and *after* divine service.

By 3 Car. I. c. 1, any drover, carrier, or the like, travelling, or coming to his inn or lodging on Sunday, forfeits 20s. A van travelling on Sunday between London and York is within the statute, *Middleton ex parte*, 3 B. & C. 164.

Forty watermen are permitted to ply on the Thames,

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between Vauxhall and Limehouse, on Sundays. Fish-carriages are allowed to travel on Sundays, either laden or returning empty. Persons publicly crying, or exposing to sale, herbs, forfeit them to the poor. Butchers killing or selling any victuals, forfeit 6s. 8d.

No writ, process, or warrant, except in cases of treason, felony, or breach of the peace, shall be served on Sunday, on pain that the same shall be void, and the party serving the same be liable to an action for damages. All contracts made on Sunday are void; but a sale of goods made on Sunday, which is not made in the exercise of the *ordinary calling* of the vender, is not void under the statute, 1 *Taunt.* 131.

By 13 Geo. III. c. 80, no person shall, on Sunday or Christmas-day, kill any game, or use any gun, dog, net, or engine, for that purpose, on pain of forfeiting from 10*l.* to 20*l.* for the first offence, and from 20*l.* to 30*l.* for the second, and for any subsequent offence, 50*l.*

The 21 Geo. III. c. 49, was passed to restrain a practice, very prevalent at the time in London and Westminster: it enacts that if a house, room, or place, be opened upon Sunday, for any public entertainment, or for debating upon any subject, to which persons are admitted by *money* or *tickets*, the keepers of it shall forfeit 200*l.* to any person who will prosecute; the manager or president, 100*l.* and the receiver of the money or tickets, 50*l.*; and every person *printing* an advertisement of such meeting forfeits 50*l.*

For the regulations with respect to bakers on Sundays, see the article *Bread*, in the DICTIONARY.

#### IX. WITCHCRAFT AND RELIGIOUS IMPOSTURE.

There is nothing more common in the earlier periods of our history than the imputation of *witchcraft* against persons of the highest rank; and the anxiety manifested by the individuals to clear themselves, shows both the credit and importance attached to these inventions. Most people are familiar with the cases of the Duchess of Gloucester, in the reign of Henry VI.; and that of Jane Shore, in the reign of Edward V. So late as the reign of James I. witchcraft is considered a crime

actually existing, and punished with death: under this law, many persons were sacrificed to the prejudices of their neighbours and their own illusions; not a few having, by some means, confessed the fact at the gallows.

The statute of James I. is repealed by 9 Geo. II.; and by the Vagrant Act, 5 Geo. IV. c. 83, persons pretending to tell fortunes, or using any subtle craft, means, or device, by palmistry, or otherwise, to deceive any of his Majesty's subjects, are rogues and vagabonds. The laws against witchcraft were in force in Ireland till the year 1821, when they were repealed by 1 & 2 Geo. IV. c. 18.

A similar species of offence is that of RELIGIOUS IMPOSTURE, by pretending to an extraordinary commission from Heaven, thereby abusing and terrifying people with groundless apprehensions. This offence is punishable by fine and imprisonment, and infamous corporal infliction.

#### X. DRUNKENNESS, LEWDNESS, AND BASTARDY.

*Drunkenness* is punishable, by 21 Jac. I. c. 7, with the penalty of 5s. or sitting six hours in the stocks, if unable to pay the penalty. Upon a second offence, the offender may be bound in a recognizance of 10*l.* with two sureties for good behaviour; but conviction must, in all cases, be had in six weeks.

*Open and notorious lewdness*, either by frequenting houses of ill-fame, which is an indictable offence, or by indecently exposing the person to public view, is punishable with fine and imprisonment.

By the 5 Geo. IV. c. 83, *exposing a man's person*, with intent to insult a female, is an offence for which the offender may be treated as a rogue and vagabond; and so is the wilfully exposing an *obscene print*, or indecent exhibition. By the 3d section, every common prostitute wandering in public, and behaving in a riotous and indecent manner, may be treated as an idle and disorderly person.

By 50 Geo. III. c. 51, the mother of a bastard *chargeable* to the parish may, after the expiration of one ca-

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lendar month from her delivery, be committed, by two justices, for not exceeding twelve calendar months, nor less than six weeks; but, at the end of six weeks, two justices, at petty sessions, may discharge her on their own knowledge, or on certificate from the keeper of the House of Correction of her good behaviour, and the expectation of amendment.

### XI. BUYING AND SELLING OF WIVES.

The Court of King's Bench is the guardian of public morals, and has the judicial animadversion of offences against public decency and good behaviour. In that Court, an information was granted against a number of persons concerned in assigning a young girl to a gentleman under pretence of learning music, but for the purpose of prostitution, 3 *Bur.* 1438. There is no doubt that the vulgar and brutal exhibition, too often tolerated, of a man *selling his wife*, and delivering her in a halter, is a misdemeanor, both in the buyer and seller, punishable with fine and imprisonment. In a more mitigated outrage of this sort than a public sale, namely, where a husband formally assigned his wife over to another man, Lord Mansfield directed a prosecution for the transaction, as being notoriously against public decency and good manners. All such acts are public misdemeanors, and punishable either by an information or by an indictment preferred before a grand jury at the assizes or quarter sessions.

## CHAP. II.

### *Offences against the Law of Nations.*

THE principal offences against the law of nations, animadverted on by the laws of England, are of three kinds: 1. Violation of safe conducts; 2. Infringement of the rights of ambassadors; and, 3. Piracy.

As to the first, violation of *safe conducts* or *passports*, it is enacted, by 31 Hen. VI. c. 4, that if any of the king's subjects molest, spoil, or rob any foreigner in amity, league, or truce, or under safe conduct, the

Lord Chancellor, with any of the justices of either the King's Bench or Common Pleas, may cause full restitution and amends to be made to the party injured.

The *rights of ambassadors* are fully protected by the 7 Ann, c. 12, which enacts, that "an ambassador or other public minister, or his domestics, registered in the Secretary of State's Office, are not to be arrested; if they are, the process is void, and the persons suing out, and executing it, shall suffer such penalties and corporal punishment as the Lord Chancellor or either of the chief justices think fit." Neither can the goods of an ambassador or his servant be distrained; but for a servant to be entitled to this privilege, he must reside in the house of the ambassador.

Lord Ellenborough, in *Viveash v. Becker*, decided that a resident merchant, who acts as *consul* to a foreign prince, is not a public minister entitled to the privileges of an ambassador, 3 M. & S. 284.

The third offence against international law is *Piracy*.

By 11 & 12 W. III. c. 7, if any natural-born subject commit any act of hostility upon the high seas, against other of his Majesty's subjects, under colour of a commission from any foreign power, this, which in an alien would be only an act of war, is piracy in a subject.

It is piracy forcibly to board any merchant vessel, and throw her goods overboard, without actually seizing and carrying her off; so it is to trade with known pirates, furnish them with stores, or any how assist, confederate, or correspond with them.

By 5 Geo. IV. c. 17, persons engaged in the African slave-trade shall be "adjudged guilty of piracy, felony, and robbery, and, being convicted thereof, shall suffer death, without benefit of clergy, and loss of lands, goods, and chattels, as pirates, felons, and robbers, upon the seas, ought to suffer."

To encourage the defence of merchant vessels against pirates, the commander or seamen wounded, and the widows of such seamen as are slain in any piratical engagement, are entitled to a bounty, to be divided among them, not exceeding one-fiftieth part of the value of the cargo on board; and such wounded seamen are



entitled to the pension of Greenwich Hospital, which no other seamen are, except such only as have served in a ship of war.

A commander behaving cowardly in not defending his ship, if she carry guns or arms, or discharging the mariners from fighting, so that the ship fall into the hands of pirates, forfeits all his wages, and suffers six months' imprisonment.

The 6 Geo. IV. c. 49, for encouraging the capture of piratical vessels, provides that the officers, seamen, marines, and others actually on board any king's ship at the taking or destroying any piratical vessel shall, after the 1st Jan. 1820, receive the sum of 20*l.* for each pirate taken, or killed, during the attack, and the sum of 5*l.* for every other man of the crew, not taken or killed, who shall have been alive on board the pirate ship at the beginning of the engagement.

### CHAP. III.

#### *High Treason.*

At common law, the nature and constituents of high treason were vague and undefined, and acts tending merely to diminish the dignity or respect towards the crown were held to be within its scope; so that if a man became *popular* it was construed to be encroaching on the royal power, and held to be treason. But an end was put to constructive treason by the 25 Edw. III. c. 2, in which those acts amounting to treason are distinctly specified. The provisions of this statute are confirmed by 36 Geo. III. c. 7, which is made perpetual by the 57 Geo. III. c. 6. From these acts, the law of treason may be thus stated:—

1. It is treason to *compass* or *imagine* the death of the king, queen, or their eldest son and heir. But this compassing must be manifested by some *open* act, as by providing weapons, ammunition, or poison, or by sending letters to excite others to *join* in the enterprise. In the case of the Regicides, the indictment charged that they did traitorously compass and imagine the death of

the king. And the taking of his head was laid, among others, as an *overt* act of compassing.

2. To have *carnal knowledge* of the queen, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir, is treason. In a criminal intercourse with the queen, it is immaterial whether it be with or without force; but it is high treason in both parties if consenting.

3. To *levy war* against the king in his realm is high treason, both by statute of Edw. III. as well as the common law. But as, in the first case of treason, there must be an *open* act, a mere conspiracy to levy war is no open act, unless war be actually waged; though if a war be waged, then the conspirators are all traitors, although they are not in arms. Also, this species of treason is incurred by taking arms not only to dethrone the king, but under pretence to reform religion, or the laws, or to remove evil counsellors, or other grievances, real or imaginary.

Upon the trial of Lord George Gordon, Lord Mansfield declared that it was the unanimous opinion of the Court that an attempt, by intimidation and violence, to force the repeal of a law, was levying war against the king, and high treason, *Doug.* 570.

4. To *adhere to the king's enemies* within the realm, or give them aid in the realm, or elsewhere, is high treason. This must likewise be proved by *overt* act, as by furnishing money, arms, ammunition, or provision, or sending intelligence to the king's enemies.

5. To *counterfeit* the king's money, or to counterfeit the king's great seal, or privy seal, is high treason; or bringing false money into the kingdom, counterfeited like the money of England, to make payment therewith, knowing it to be false, is high treason. Also, if the king's own ministers alter the standard, or alloy, without authority of parliament, it is treason.

6. The last species of treason ascertained by the 25 Edw. III. is, if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in Eyre, or justices of assize, and all other justices assigned to hear and determine, being in their

places, such person is guilty of treason. This clause extends only to the *actual* killing, and only to the officer therein specified; so that the Barons of the Exchequer, as such, are not included.

#### TREASON AGAINST THE COIN.

By 5 Eliz. c. 11, clipping, washing, rounding, or filing, for gain's sake, any of the money of this realm, or other money suffered to be current here, is deemed high treason; and, by another act of the same reign, the offence is extended to "impairing, diminishing, falsifying, scaling, and lightening," the coin.

By 8 & 9 W. III. c. 26, made perpetual by 7 Ann, c. 25, whoever, without proper authority, shall knowingly make or mend, or buy, conceal, hide, or have in his possession, any implements of coinage, specified in the act, or other tools or instruments, proper only for the coinage of money, or shall convey the same out of the king's mint, he, together with his counsellors, procurors, aiders, and abettors, shall be guilty of high treason.

The statute further makes it treason to mark any coin on the edge with letters, or otherwise, in imitation of those used in the Mint; or to colour, gild, or case over, any coin resembling the current coin; or even to round blanks of base metal.

And, lastly, by 15 & 16 Geo. II. c. 28, it is made treason if any person *colour* or *alter* any shilling or sixpence, either lawful or counterfeit, to make them resemble a guinea or half-guinea; or any halfpenny or farthing, to make them resemble a shilling or sixpence. The offender, in this case, may be pardoned (being out of prison), provided he discover and convict two other offenders of the same kind.

The exchanging guineas for bank-notes, taking the guineas in such exchange at a higher value than they were current for by the king's proclamation, is not an offence against 5 & 6 Edw. VI. c. 19, *Rex v. De Yonge*, 14 E. R. 402.

#### TREASON AGAINST THE PROTESTANT SUCCESSION.

By 1 Ann, c. 17, if any endeavour to deprive or hinder

any person, being the next in succession to the Crown, according to the limitation of the Act of Settlement, from succeeding to the Crown, and shall attempt the same by any overt act, such offence is high treason. So, also, by 6 Ann. c. 7, if any person, by writing or printing, maintain and affirm that any other person has any right or title to the Crown, otherwise than according to the Act of Settlement; or that the king of this realm, with the authority of parliament, is not able to make laws and statutes to bind the Crown and the succession, it is treason.

Beside these statutory treasons, two additional treason acts were passed in the 36th year of George III.; one for the better preservation of the king's person and government, the other for more effectually preventing seditious meetings and assemblies. The last of them was passed for three years only; and of the former, sections 1, 5, 6, are made perpetual by 57 Geo. III. c. 6; the rest are expired.

#### TRIAL AND PUNISHMENT OF TRAITORS.

Considering that, in prosecutions for high treason, the accused has the whole power and influence of the Crown to contend against, with, perhaps, public feeling strongly excited against him, the law has humanely provided various helps and indulgences which do not extend to other crimes and misdemeanors. Thus, in case of high treason, whereby corruption of blood may ensue, (except treason against the coin,) or misprision of such treason, it is enacted, under 7 W. III. c. 3, that no person shall be tried for such treason, except an attempt to assassinate the king, unless the indictment be found within *three* years after the offence committed.

By 7 Ann. c. 21, all persons indicted for high treason, or misprision thereof, shall have not only a copy of the indictment, but a list of all the witnesses to be produced, and of the jurors empannelled, with their professions, and places of abode, delivered to him ten days before the trial, and in presence of two witnesses, the better to prepare him to make his challenges and defence. The *practice* is to deliver a copy of the indictment, and

the list of witnesses and jurors, ten clear days, exclusive of the day of delivery and the day of trial, and the intervening Sunday previous to the trial.

All persons, too, accused of high treason are entitled to have two counsel allowed them by the Court, and the same privilege is granted on impeachment by the House of Commons.

But the 6 Geo. III. c. 53, excepts, from the statute of Ann, treason against the coin and the royal seals. And, by the 39 and 40 Geo. III. c. 93, it is enacted that, in all cases of high treason in which the overt act alleged in the indictment is any direct attempt on the life or person of the king, the accused in that case shall be indicted, arraigned, tried, and attainted, as if he were charged with murder; but, upon conviction, judgment is to be given, and execution done, as in other cases of high treason.

The *punishment for treason*, besides attainder, forfeiture, and corruption of blood, was, till lately, a barbarous exhibition. That in high treason, not relating to the coin, was "that the offender be drawn to the place of execution, and be there hanged by the neck, and cut down alive, that his entrails be taken out and burned before his face, that his head be cut off, that his body be cut into four quarters, and that his head and quarters be at the king's disposal." In lieu of this punishment, by 54 Geo. III. c. 146, the sentence to be awarded is drawing on a hurdle, hanging by the neck till dead, beheading, and quartering. But, after judgment, the king may direct, by warrant, that the traitor shall not be drawn nor hanged, but be beheaded alive; and the warrant may direct how the body shall be disposed of.

Before the 30 Geo. III. c. 48, from the remotest times, women, for every species of treason, were sentenced to be burned alive, but now they are only to be drawn to the place of execution and hanged.

## CHAP. IV.

*Minor Offences against the Coin and Government.*

IN the last chapter have been described the offences against the coin amounting to treason; we shall now briefly enumerate the minor offences, including also those inferior misdemeanors against the coin and government which do not amount to felony.

By 13 & 14 Car. II. c. 31, the melting down any current silver money is punishable with forfeiture of the same, and also double the value; and the offender, if a freeman, may be disfranchised; if not, he may be imprisoned six months.

By 6 & 7 W. III. c. 17, if any person have in his custody any clippings or filings of the coin, he forfeits the same, and 500*l.* half to the king, half to the informer, and be branded in the cheek with the letter R. The rewards, however, under this act, are abolished by 58 Geo. III. c. 70.

By 8 & 9 W. III. c. 26, it is made felony if any person whiten copper for sale, so as to resemble silver, or deal in any composition which shall resemble gold, but be below the standard; or shall receive or pay, at a less rate than it imports to be, any counterfeit or milled money of this kingdom.

Any person may break or deface money suspected to be counterfeit; but if such money prove genuine coin, it is at the breaker's cost.

The 15 & 16 Geo. II. c. 28, subjects the utterer of counterfeit coin, or who tenders it in payment, knowing it to be such, to imprisonment for six months for the *first* offence; for the *second* offence, two years; the *third* offence is felony. Also, if a person knowingly tender in payment counterfeit money, having, at the time, more in his possession; or within ten days after, tender other false money, he shall be deemed a common utterer of counterfeit money, subject, for the first offence, to imprisonment for one year.

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The mere act of *having* counterfeit silver in possession, with an intent to utter it as good, is no offence, for there is *no criminal act done*. But *procuring* base coin, with intent to utter it as good, is a misdemeanor; and having a large quantity of such coin is evidence of having procured it with such intent, unless there are other circumstances to induce a suspicion that the defendant was the maker, 4 *Chitty's Bl* 99, n. 6.

To counterfeit any copper money, made current by proclamation, or to buy, sell, or put it off at a less value than it imports to be, is felony.

By 37 Geo. III. c. 126, coining or counterfeiting any *foreign* gold or silver coin, or importing foreign counterfeit gold or silver coin, with intent to utter, is felony, punishable with transportation for seven years.

By the 6th section of the same act, having in custody, without lawful excuse, more than five pieces of bad coin, is punishable with a forfeiture of not exceeding 5*l.* nor less than 40*s.* for every piece.

By 43 Geo. III. c. 139, it is a misdemeanor, punishable, for the first offence, with one year's imprisonment, to counterfeit *foreign* coin of copper, or mixed metal, not current by proclamation. To have more than five pieces of such coin in possession, without lawful excuse, subjects to a penalty of not more than 40*s.* nor less than 10*s.* for each piece. And, by 7th section, houses of suspected persons may be searched, by warrant, for such counterfeit coin.

Till lately, various acts were in force to restrain the exportation of gold or silver plate, or bullion; but these were repealed by the 59 Geo. III. c. 49, and the gold and silver coin of the realm, and also the bullion produced by melting (but not the clippings, or bullion produced by melting the clippings of the coin), may now be manufactured or exported without restraint or penalty.

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By 3 Hen. VII. c. 14, if any sworn servant of the royal household conspire to kill any lord of this realm, or other person sworn of the king's council, it is felony.

In consequence of the attempt of Guiscard to stab Mr. Harley, in the reign of Queen Anne, it was made felony to assault, strike, wound, or attempt to kill, any privy counsellor in the execution of his office.

#### DESTROYING OR EMBEZZLING THE KING'S STORES.

By 12 Geo. III. c. 24, it is felony to set on fire or destroy any of His Majesty's ships of war, or destroy the king's arsenals, magazines, dock-yards, rope-yards, victualling offices, or materials appertaining thereto; or military, naval, or victualling stores, or to procure, abet, and assist in such offence.

By 39 & 40 Geo. III. c. 89, persons other than contractors, receiving or having stores of war in their possession, may be transported for fourteen years; and, by 4th section, defacing marks, denoting stores to be the king's property, for the purpose of concealment, is subject to a like punishment.

#### SERVING FOREIGN STATES.

By the 29 Geo. II. c. 17, it is felony in any subject of Great Britain to enter foreign service without license under the king's sign manual. But this statute is repealed by what is called the "Foreign Enlistment Act," 59 Geo. III. c. 69, which provides, in a very comprehensive manner, for the punishment of offences under this head.

By this statute, if any natural born subject of His Majesty enter into the service of any foreign state without the license of His Majesty, or order of council, or royal proclamation; or if any person within the dominion of Great Britain shall hire or attempt to hire any person to enlist in the service of any foreign state, such person is guilty of a misdemeanor, punishable with fine or imprisonment, or both, at the discretion of the Court.

The officers of the customs are empowered, on information, upon oath, to detain any vessel having persons on board destined for such foreign service.

Masters of vessels, knowingly, having on board persons engaged as aforesaid, forfeit 50*l.* for each individual.



Persons fitting out any vessel, without license, are guilty of a high misdemeanor, and the ship and stores become forfeited.

Even the assisting any foreign state with warlike stores, without license, is declared a misdemeanor, punishable with fine and imprisonment.

## CHAP. V.

### *Misprision and Contempt.*

ANOTHER class of offences, directed more immediately against the king and government, are entitled *Misprision* and *Contempt*, and include those offences which are next under the degree of treason or felony.

The first and principal of these is the *mal-administration of public officers*, by the embezzlement of the public money or otherwise. This is usually punished by parliamentary impeachment, and although not a capital offence, subjects the delinquent to fine, imprisonment, exile, or perpetual disability.

For the better punishment of malversation in office abroad, it is provided, by 42 Geo. III. c. 85, that all offences committed by any person employed abroad, in the public service in any station, civil or military, may be prosecuted in the Court of King's Bench, in England; and, beside the punishment which the party would have suffered for the same crime in England, he is made liable, at the discretion of the Court, to be adjudged incapable of ever serving His Majesty again.

To accept a pension from a foreign prince, without the consent of the Crown, is a contempt of the king's government. So it is to drink to the *pious memory* of a traitor, or for a clergyman to absolve persons at the gallows who persist in the treasons for which they suffer. To give out scandalous stories concerning the king, or falsely assert that he labours under the affliction of mental derangement, is criminal, and an indictable offence.

Contempt against the *king's palaces*, by striking therein, whereby blood is drawn, is high misprision, punishable with perpetual imprisonment. But striking in the king's *superior courts of justice*, in Westminster-Hall, or at the

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assizes, is still more criminal. A stroke or blow in a court of justice, or even assaulting a judge sitting in the court, by drawing a weapon, without any blow struck, is punishable with the loss of the right hand, imprisonment for life, and forfeiture of goods and chattels, and the profits of lands during life. A rescue also of a prisoner from any of the said courts, without striking, is punishable with perpetual imprisonment and forfeiture.

Even threatening or reproachful words used to a judge sitting in the courts, are a high contempt, punishable with fine, imprisonment, and corporal infliction. And it has been lately determined, in *Rex v. Davison*, that a judge sitting at *Nisi Prius* has the power of fining, even a defendant conducting his own defence to a criminal charge, for contempt of the Court, in uttering offensive matter in the course of that defence, 4 B. & A. 329.

If a man assault or threaten his adversary for suing him, a counsellor or attorney for being employed against him, a juror for his verdict, or a gaoler or other ministerial officer for keeping him in custody, he is liable to fine and imprisonment.

To endeavour to dissuade a witness from giving evidence, to disclose an examination before the privy council, or to advise a prisoner to stand mute, are all impediments of justice, and high contempts of the king's courts, punishable with fine and imprisonment.

Lastly, it is a high misprision, subject to fine and imprisonment, for a grand juror to disclose to a person indicted the evidence that appeared against him.

### CHAP. VI.

#### *Offences against Public Justice.*

Of the offences under this head, some are felonious, whose punishment may extend to death; others are only misdemeanors. We shall begin with

#### RESCUE,

Which is the forcibly and knowingly freeing another from an arrest or imprisonment, and renders the rescuer

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a party in the crime. Thus, a rescue in treason, is treason; for felony, is felony; and for a misdemeanor, a misdemeanor. But before the rescuer can be capitally punished, the principal must be attainted, or receive judgment, otherwise he is only liable for a misdemeanor.

By 16 Geo. II. c. 31, to convey to any prisoner in custody for treason or felony, any arms, disguise, or instruments; or in any way to assist his escape, without the knowledge of the gaoler, though no escape be attempted, is felony, and subjects the offender to transportation for seven years; or, if the prisoner be in custody for an inferior offence, or charged with a debt of 100*l.* it is then a misdemeanor, punishable with fine and imprisonment.

This act, however, does not extend to cases where an actual escape is made, but is confined to cases of an *attempt*. But, by 4 Geo. IV. c. 64, conveying into a prison any disguise or instrument to facilitate the escape of any prisoner, and aiding the escape of a prisoner, whether an escape be effected or not, is felony, and the offender may be transported for not exceeding fourteen years.

By 52 Geo. III. c. 156, persons aiding the escape of prisoners of war are guilty of felony, and liable to transportation.

Officers who, after arrest, negligently permit a felon to escape, are punishable by fine; but *voluntarily* suffering escape, renders them participators in the crime for which the felon was in custody.

*Private* individuals, who have persons lawfully in their custody, are guilty of an escape, if they suffer them illegally to depart; but they may protect themselves from liability, by delivering over their prisoner to some legal and proper officer. A private person thus guilty of an escape, the punishment is fine or imprisonment, or both.

#### GAOLERS AND OFFICERS.

To oppose any officer in the execution of any *lawful* process renders the party an accomplice in the crime.

A *goaler* is the master or governor of a prison, and is so far under the protection of the law, that if a person threaten him for keeping a prisoner in custody, he may

be fined and imprisoned. And if, in repelling force he commit homicide, it is justifiable; but, on the contrary, if he be killed it is murder.

By 14 Edw. III. c. 4, if any gaoler, by two great severity of punishment, compel any prisoner, against his will, to accuse and turn evidence against some other person, it is felony in the gaoler.

By 3 Geo. I. c. 15, none shall purchase the office of gaoler, or any other office pertaining to the high sheriff, under pain of 500*l*.

By 4 Geo. IV. c. 64, gaolers permitting the sale of any spirituous or fermented liquors in prison are liable to a penalty of 20*l*.

By the same act, gaolers may punish certain offences in prison, as swearing, indecent behaviour during divine service, idleness at work, or wilful mismanagement of it, by solitary confinement, or keeping the prisoner on bread and water, for any term not exceeding three days. See *Gaol*, in the *DICTIONARY*.

## THEFT-BOTE

Is when the party robbed not only knows the thief, but takes his goods again, or other amends, upon agreement not to prosecute. It is frequently called *compounding of felony*, and is punished, by the common law, with fine and imprisonment.

By 7 & 8 Geo. IV. c. 29, s. 59, if any person shall publicly ADVERTISE A REWARD for the return of any property *stolen or lost*, and in such advertisement use any words purporting that *no questions will be asked* or inquiry made after the person producing such property, or promise to return, to any pawnbroker, money advanced on such property, he shall, as well as the printer and publisher of such advertisement, be subject to a penalty of 50*l*. to be recovered, with full costs of suit, by any person who will sue for the same.

Nearly akin to these offences is that of TAKING A REWARD under pretence of helping the owner to his stolen goods. This was a contrivance carried on to a great extent in the beginning of the reign of Geo. I. by the notorious Jonathan Wild, who had under him a regular disciplined corps of thieves, who brought in their spoils to

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him ; and he kept a sort of public office, for restoring them to the owners at half price. To prevent which, it was made a capital offence to take any reward under pretence of helping the owner to stolen goods ; and now, by 7 & 8 Geo. IV. c. 29, s. 58, every person who shall corruptly take any money or reward on account of helping the owner to any property stolen, taken, or converted, (unless he cause the offender to be apprehended,) shall be guilty of felony, subject to transportation for life or not less than seven years, or imprisonment, with or without whipping, for not exceeding four years.

#### RECEIVERS OF STOLEN GOODS.

Receiving stolen goods, *knowing them to be stolen*, is only a misdemeanor at common law ; but later statutes make the offender accessory to the theft and felony or misdemeanor. By 7 & 8 Geo. IV. c. 29, s. 54, the receiver of any property feloniously stolen or taken is subject to transportation for fourteen or not less than seven years, or imprisonment, with or without whipping, for not more than three years. If the original offence amount only to *misdemeanor*, the receiver is subject only to transportation for seven years, or imprisonment for two, with or without whipping. In both these cases the receiver may be tried, whether or not the principal offender has been convicted.

#### RETURNING FROM TRANSPORTATION.

By the 5 Geo. IV. c. 84, which is the last act on this subject, it is made a capital offence for any person to be at large before the expiration of the term for which he is transported. By the 22d section, to rescue, or attempt to rescue, or to convey any disguise, or instrument of escape to any one while in the act of being removed or transported, is felony, and subjects the offender to transportation for seven years. A reward of 20*l.* is to be given for the discovery of any such offender at large.

#### BARRATRY, MAINTENANCE, AND CHAMPERTY.

Common *barratry* is the frequent stirring up suits and quarrels among the people, and, in a common person, is

punishable with fine and imprisonment; but if the offender belong to the *legal profession*, he may be transported for seven years.

An offence of not less malignity is that of suing another in the name of a *fictitious* plaintiff, either one not in being at all, or one who is ignorant of the suit. This offence, if committed in any of the king's superior courts, is left, as a high contempt, to be punished at their discretion. But courts of a lower degree, where the authority of the judge is not equally extensive, it is only punishable by six months' imprisonment and treble damages.

*Maintenance* bears a near relation to barratry, and is an officious intermeddling in a quarrel or suit, that no way belongs to one, by assisting either party with money, or otherwise, to prosecute or defend it. It is punishable with fine and imprisonment. A man may, however, maintain the suit of his near kinsman, servant, or poor neighbour, out of charity or compassion, with impunity.

*Champerty* is a species of maintenance, punishable in the same manner, and is a bargain with a plaintiff or defendant to share the land, debt, or other matter in dispute, if they prevail at law; whereupon the champertor is to carry on the party's suit at his own cost.

#### PERJURY AND SUBORNATION.

Perjury is defined to be a wilful false swearing in any judicial proceeding, in a matter material to the issue or point in question, on a *lawful* oath, administered by some person of competent authority. To constitute the crime, the falsehood of the oath must be wilful, positive, and corrupt, and must not happen through haste, inadvertence, or weakness.

*Subornation of perjury* is the offence of procuring another to take such false oath as constitutes perjury in the principal.

A man may be indicted for perjury in swearing that he "*thinks*" or "*believes*" a fact to be true, which he must know to be false; but the fact must be material to the case, or no injury is done.

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The punishment of perjury and subornation of perjury was formerly death; then forfeiture of goods; afterwards banishment, or cutting out the tongue; it is now fine, imprisonment, the pillory, or transportation. The 56 Geo. III. c. 138, which abolishes the pillory in *all other cases*, expressly retains it in prosecutions for perjury. A person convicted of perjury is incapable of being a witness, unless his competency be restored by pardon under the great seal, or a reversal of judgment.

### CONSPIRACY.

This is a term of extensive and rather undefined application in law. To constitute the offence, there must be *confederacy*, and for a *criminal* object; and, in general, any combination to injure an individual in his person, property, or character, is a conspiracy.

The offence is not confined to the prejudicing an individual, it may be to injure public trade, to affect public health, to violate public police, to insult public justice, or to do any act in itself illegal. A conspiracy to prevent a prosecution for a felony is an offence, 14 *Ves.* 65. So is one to raise the price of the funds. A combination of wine-merchants to sell pernicious liquor; of parish officers to marry paupers; and of any persons to procure the release of a prisoner by fictitious bail, is indictable as a conspiracy. An agreement between private individuals to support each other in all undertakings, lawful or otherwise, is illegal, 4 *Chitty's Bl.* 136.

There are many cases in which the act itself would not be cognizable by law, if done by a single person, which becomes the subject of indictment when effected by several with a joint design. Thus, each person attending a theatre has a right to express his disapprobation of the piece acted, or a performer on the stage; but if several *agree* to condemn a play, or hiss an actor, they will be guilty of conspiracy, 2 *Camp.* 358.

The statute for punishing workmen for combining to raise wages is repealed by 6 Geo. IV. c. 129; but such combinations are still illegal at common law.

The punishment of conspiracy is fine and imprisonment, at the discretion of the Court.

## BRIBERY.

Bribery is when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behaviour in his office : and though the bribe is refused, the offerer is punishable. By 11 Hen. IV. all judges and officers of the king, convicted of bribery, shall forfeit treble the bribe, be punished at the king's will, and be discharged from his service for ever.

To offer money to a king's minister, for the purpose of obtaining a *public employment*, is held to be a misdemeanor, 4 Burr. 2495.

Officers of the revenue taking bribes are punishable by particular statutes : so, also, is the offence of bribery at parliamentary elections.

By the 5 & 6 of Edw. VI. the sale of offices in *courts of justice* is prohibited on pain of forfeiture and disability. It has been resolved that officers in the ecclesiastical courts are within the meaning of the last act ; but the chief justices of the King's Bench and Common Pleas are especially exempt. By two acts, however, of the session of 1825, 6 Geo. IV. c. 82, and the 6 Geo. IV. c. 83, the sale of offices, both in the King's Bench and the Common Pleas is abolished ; in lieu of which, the salary of the chief justice of the King's Bench is raised to 10,000*l.* per annum, with an additional retiring pension of 200*l.* ; the salary of the chief justice of Common Pleas to 8,000*l.* with an additional retiring pension of 450*l.* per annum.

## EMBRACERY

Is an attempt to influence the jury in their verdict, by overawing them, or by promises, entreaties, or entertainments. The punishment of the embraceor, and of the jurors wilfully and corruptly consenting thereto, is, by 6 Geo. IV. c. 50, fine and imprisonment.

## EXTORTION.

*Extortion* signifies, in a large sense, any oppression under colour of right ; but, strictly, it is any officer ta-



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king, by colour of his office, any money or valuable, where none is due, or not so much as is due, or before it is due. The punishment is, removal from office, fine, or imprisonment.

### DESTRUCTION OF RECORDS, WILLS, AND WRITINGS.

By 7 & 8 Geo. IV. c. 29, s. 21, if any person steal or, for any *fraudulent purpose*, take away or obliterate, injure or destroy any record, writ, panel, process, deposition, affidavit, rule, order, or any original document, whether belonging to any court of record, or relating to any matter, civil or criminal, depending in any court; he shall be liable to transportation for seven years, or such other punishment by fine and imprisonment as the Court shall award.

It is felony to acknowledge any fine, recovery, deed enrolled, statute, recognizance, bail, or judgment, in the name of another person, not privy to the same. So it is to personate any other person as *bail* before any judge of assize, or other competent authority.

By 22d section of 7 & 8 Geo. IV. c. 29, to steal or, for any *fraudulent purpose*, conceal or destroy any WILL, CODICIL, or other testamentary instrument relative to real or personal property, is a misdemeanor, subject to transportation for seven years, or discretionary fine and imprisonment. So is the stealing the writings or evidence relative to the title to any real estate.

By 5 Geo. IV. c. 20, persons in the Post-office, embezzling or destroying parliamentary proceedings, &c. sent by post, are guilty of a misdemeanor, punishable with fine and imprisonment.

The last offence against public justice we shall mention is the *negligence of public officers* entrusted with judicial administration, as sheriffs, coroners, and constables; which makes the offender liable to be fined, and, in flagrant cases, will amount to a forfeiture of office, if a beneficial one.

## CHAP. VII.

### *Offences against the Public Peace.*

THESE offences are either such as are an actual breach

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of the peace; or constructively so by tending to make others break it. Both these species of offence are either felonies or misdemeanors. The felonious breaches of the peace are strained up to that degree of criminality by several modern statutes; we shall begin with the less penal offences against the peace.

### CHALLENGE TO FIGHT.

To challenge to fight, either by word or letter, or be the bearer of such challenge, is an indictable offence, punishable with fine and imprisonment. It is an offence, though the provocation to fight does not succeed; and it is a misdemeanor merely to endeavour to provoke another to send a challenge, 6 *East*, 464. But mere words, which, though they may produce a challenge, do not directly tend to that issue, as calling a man a *liar* or *knave*, are not necessarily criminal, though it is probable they would be so if it could be shown they were meant to provoke a challenge, 4 *Chitty's Bl.* 15, n. 16.

If a challenge to fight arise on account of money won at gaming, or if any assault or affray happen upon such account, the offender, by 9 Ann, c. 14, shall forfeit all his goods to the crown, and suffer two years' imprisonment; the offence may be committed any time after the playing by which the money is won.

### AFFRAY.

From the French *effrayer*, "to frighten," signifies a fighting between two or more in some *public* place, for if the fighting be *private*, it is not an affray, but an assault. No angry or threatening words, however violent, amount to an affray; but if a person arm himself with dangerous or unusual weapons, in a way to excite *terror* in the people, it is an affray. The punishment of common affray is by fine and imprisonment. Affrays may be suppressed by any private person present; but the constable, who is bound to keep the peace, may break open doors to suppress an affray, or apprehend the affrayer.

### RIOTS, ROUTS, AND UNLAWFUL ASSEMBLIES.

*Riot* is the tumultuous assembling of *three* or more

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persons, who commit some unlawful act with force and violence. A *rout* is the tumultuous assembling of persons to do an unlawful act, without actually committing it. An *unlawful assembly* is any meeting whatever, under such circumstances of terror as may endanger the public peace, and raise fears and jealousies among the people.

The punishment of these offences is fine and imprisonment, with hard labour, by 3 Geo. IV. c. 114.

But if an *unlawful assembly* amount to the number of *twelve*, it becomes a more serious offence, and is *FELONY* ; which leads us to speak of the

### RIOT ACT.

For the more effectual prevention of tumultuous assemblages, the 1 Geo. I. c. 5, was passed, by which if twelve persons are unlawfully assembled, to the disturbance of the peace, and continue together one hour after being commanded by proclamation of one justice of peace, sheriff, or under sheriff, to disperse, they are guilty of felony.

If the reading of the proclamation be by force opposed or hindered, such hinderers and opposers are felons ; and all persons to whom such proclamation ought to have been made, and *knowing such hindrance*, and not dispersing, are felons.

The 6th section makes provision for the recovery of damages done by any riotous assembly, by action against the hundred ; but this part of the statute is repealed by 7 & 8 Geo. IV. c. 31, and a general remedy is given against the hundred for any damage done by rioters, to any church, chapel, shop, or building, or to any fixture, furniture, or goods whatever.—See *Hue and Cry*, in the *DICTIONARY*.

Various acts for the prevention of seditious and tumultuous meetings were passed in the last reign, but as they were only measures intended for periods of unusual political excitement, and as the most recent of them, that of 1820, expired in 1825, it is unnecessary to specify their provisions.

## TUMULTUOUS PETITIONING.

The offence against the public peace, by tumultuous petitioning, was carried to a great height in the times preceding the civil war, and it was to prevent the recurrence of the evil that the 13 Car. II. c. 5, was passed.

By this statute, it is enacted that the soliciting or procuring the names of above twenty persons to any petition to the king, or either house of parliament, for any alteration in church or state, unless the contents thereof be approved by three justices of the peace of the county, or the majority of the grand jury, either of the assizes or quarter sessions; or, in London, by the lord mayor, aldermen, and common council; or presenting any petition by more than ten persons at a time; incurs, in either case, a penalty of 100*l.* and three months' imprisonment.

It is only under this statute that the corporation of London, since the Restoration, have usually taken the lead in petitions to parliament for the alteration of any established law or grievance: but it seems not to warrant a petition from the common hall.

In the trial of Lord George Gordon, it was contended that the article in the Bill of Rights, which declares that it is the right of the subject to petition, had, virtually, repealed the act of Car. II. This, however, was denied, by Lord Mansfield, *Douglas*, 571; but the better opinion appears to be that the people have a right, at least, to petition their representatives in parliament; and the act of Charles, limiting the number of names, is abrogated by the Bill of Rights: and the acknowledged practice is consistent with this opinion.

## RIDING OR GOING ARMED.

Riding or going armed with dangerous and unusual weapons is particularly prohibited by the statute of Northampton, 2 Edw. III. c. 3, upon pain of forfeiture of the arms, and imprisonment during the king's pleasure.

## FALSE NEWS AND PROPHECIES.

Spreading false news to make discord between the king and nobility, or concerning any great man of the

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realm, is punishable, by several statutes, with fine and imprisonment. So, by the 5 Eliz. c. 15, if any person publish any false or pretended prophecies, with intent to excite disturbance, he shall, for the first offence, forfeit 10*l.* with one year's imprisonment; and, for the second, forfeit his goods and chattels, and be imprisoned during life.

### THREATS AND THREATENING LETTERS.

By 7 & 8 Geo. IV. c. 29, s. 8, if any person *knowingly send or deliver* any letter or writing, demanding, with menaces, without reasonable cause, any money, or valuable, or accuse or threaten to accuse, or send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable with death, transportation, or pillory, or of any assault with intent to commit a rape, or of any attempt to commit a rape or *infamous crime*; every such person shall be guilty of felony, liable to transportation for life, or any term not less than seven years, or imprisonment, with or without whipping, for not more than four years.

The 9th section defines an *infamous crime* under this act to be buggery, committed either with mankind or with beast, or any attempt, solicitation, or threat to commit that abominable offence.

By the 7th section, to accuse or threaten to accuse any person of such infamous crime, with intent to extort money, and by intimidation, extort money or other valuable; the offender is made guilty of ROBBERY, and punishable accordingly.

## CHAP. VIII.

### *Offences against Commerce and Trade.*

THE commercial code of the country has undergone material alterations in the late sessions of parliament, and many regulations, founded on mistaken notions of the public interest, and which interfered with the general principle of commercial freedom, have been repealed. The chief offences remaining are the following.

## USURY,

Which is the interest or profit exacted, on a loan, beyond what is allowed by law.

By 12 Ann, c. 16, no person shall, directly or indirectly, for loan of any money, or any thing, take above the value of 5*l.* for the forbearance of 100*l.* for a year, and so proportionally for a greater or less sum; and all bonds, contracts, and assurances, made for payment of any principal sum to be lent on usury, above the rate of 5*l.* per cent. shall be void. And whoever shall take, by way of corrupt bargain, loan, &c. a greater interest, shall forfeit treble the money borrowed; one half of the penalty to the king, and the other to the prosecutor. Scriveners or brokers taking more than 5*s.* per cent. procuration money, or more than 12*d.* for making a bond, forfeit 20*l.* and suffer imprisonment half a year.

It is unnecessary, for two reasons, to specify the various decisions of the courts of law, as to what is and what is not usury, according to the act of Ann. *First*, the penalties on usury can, and most usually are evaded. *Secondly*, it is probable a successful attempt will, ere long, be made to repeal the usury laws, and leave the monied man to the enjoyment of the same unrestricted freedom in the employment of his capital which is exercised by the landlord in the disposal of his land, and the mechanic and artizan in the disposal of their labour.

## SMUGGLING.

This offence consists in importing or exporting goods, without paying the duties imposed thereon by the laws of the custom and excise.

By the 6 Geo. IV. c. 108, all the former statutes for the prevention and punishment of smuggling are repealed, and new provisions substituted in lieu thereof. By this act, if three or more persons armed with fire-arms, or other offensive weapons, shall assist in illegal exportation, or in landing, or carrying away uncustomed goods, or in rescuing any person apprehended for these offences; every person so offending shall be adjudged guilty of felony, and suffer death without benefit of clergy.

The same punishment is awarded to any person who maliciously shoots at any vessel in his Majesty's navy,

or in the revenue service, or at any officer while in the due execution of his duty. This clause comprehends aiders and abettors. Resisting any officer in the execution of his duty subjects the offender to transportation for seven years, or imprisonment and hard labour in the House of Correction for not exceeding three years.

Every person who shall assist to unship, convey, or conceal any prohibited or uncustomed goods, or who shall knowingly harbour, keep, or conceal any such, or knowingly suffer or permit it to be so done, he shall forfeit the value, or pay the penalty of 100*l.* ss. 45, 50.

Persons offering goods to sale under the pretext that they are prohibited, or have not paid duty, are subject to the same forfeiture or penalty, *s.* 48.

*Searching the Person.*—By the 36th section, officers may search, for smuggled goods, any person on board a coasting vessel, or after they have landed, and if obstructed in the execution of their duty, the penalty is 100*l.* But *before* the party is searched, they may require the officer to take them before a justice, or superior officer of the customs, who shall determine whether there be reasonable ground to suppose that such persons have in their possession any uncustomed or prohibited goods.

By the 70th section, no person, otherwise than an officer, is allowed to take up or intermeddle with any casks of spirits, containing *less* than forty gallons, found sunk in, or floating on, the seas!

*Spirits, Tobacco, and Snuff.*—By 7 Geo. IV. c. 48, any vessel arriving in any port or creek of the United Kingdom, having on board, or in any manner attached, any spirits, except rum, in any cask or package of less capacity than forty gallons, (except for the use of the seamen, not exceeding two gallons for each,) or any tobacco or snuff, in any cask or package, in which such tobacco or snuff could not be legally imported (except loose tobacco for the use of the seamen, not exceeding five pounds for each); every such vessel, with such spirits or tobacco, shall be forfeited: and every person found, or discovered to have been on board, and knowing of such spirits or tobacco, shall forfeit 100*l.*

By 7 & 8 Geo. IV. c. 56, s. 5, all spirits or tobacco

removed, or carried, without a legal permit, shall be deemed to be unshipped without payment of duty, unless the party in whose possession they are found prove the contrary.

## CHEATING.

By this is meant any fraudulent practices, by which a person is defrauded of his rights; as by false weights and measures, the selling of goods with counterfeit marks, playing with false dice, or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written: all which offences are punishable with fine and imprisonment.

A minor going about pretending he is of age, and obtaining goods, may be punished as a common cheat.

As a failure of justice frequently arises from the subtle distinctions between larceny and fraud, the 7 & 8 Geo. IV. c. 29, s. 53, enacts that if any person by any FALSE PRETENCE obtain from another any chattel, money, or valuable security, with intent to cheat or defraud, he shall be guilty of a misdemeanor, subject to transportation for seven years, or fine and imprisonment: and if upon the trial it is proved the offence *amounted to larceny*, he shall not, by reason thereof, be acquitted of the misdemeanor.

To constitute the crime, however, a simple affirmation, without an artful device or contrivance, will not amount to a false pretence; and it has been held that, to purchase goods, and give a bill for them drawn upon a banker, with whom the drawer had no effects, was not within the statute.

In order to make *legal* cheating there must be a *plausible* contrivance, as by false weights and measures, against which the ordinary prudence of individuals is no security. So that selling by *false* weights is an indictable offence, though selling *under* measure is ground only for a civil action. The selling of bad wine, pretending it to be good, has been holden indictable, 2 *Raym.* 1179; but Lord Ellenborough suggested that this was a case of conspiracy, or is to be supported only on



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the ground that the wine sold was *unwholesome* to man. Cheating at a race is indictable. An indictment will also lie against a clergyman for embezzling and misapplying money collected on a subscription-paper, for the relief of sufferers by fire, 1 *Bl. Rep.* 443.

### MONOPOLY.

By 21 Jac. c. 3, all monopolies, grants, letters patent, and license, for the sole buying, selling, and making of goods, and manufactures, are declared void, except PATENTS for fourteen years, for the sole working or making of any new manufacture, which is not mischievous to the state, or generally inconvenient. Grants by act of parliament to any corporation, company, or society, for the enlargement of trade; and letters patent concerning any printing, making gunpowder, ordnance, &c. are excepted.

### FORESTALLING, ENGROSSING, AND REGRATING.

*Forestalling* is the buying or contracting for any cattle, provision, or merchandize on its way to the market, or dissuading persons from buying their goods there, or persuading them to raise the price; any of which practices make the market dearer to the fair trader. Spreading false rumour, with intent to enhance the price of any article, amounts to the same offence.

*Regrating* is the buying corn, or other commodities, in any market, and selling it again in the same market, or within four miles thereof. For this was supposed to enhance the price, as every successive seller must have a profit.

*Engrossing* is the buying up large quantities of corn, or other commodity, with intent to sell it again, which must be injurious to the public, by putting it in the power of two or three great capitalists to raise the price of provisions at their own discretion. Even spreading rumours of the scarcity of an article, with the view of enhancing the price, is an indictable offence, *Rex v. Waddington*, 1 E. R. 143. So is the total engrossing of a commodity, with intent to sell it at an unreasonable price.

The general punishment for these three offences is discretionary fine and imprisonment.

## CHAP. IX.

### *Offences against Health and Police.*

#### QUARANTINE.

THE most important regulation for the preservation of the health of the community is the performance of *quarantine*; that is, not allowing either the persons or goods on board any vessel coming from places where the plague or other infectious disease prevails, to land at their destination till forty days, or other determinate period, has expired.

By the 6 Geo. IV. c. 98, all the prior statutes relative to the quarantine laws are repealed, and other provisions are made similar, in their nature, to former regulations. By this act, places are to be appointed, by proclamation, for the performance of quarantine; or, the privy council may order vessels to repair to certain places to be examined, without being liable to quarantine.

Masters of vessels liable to quarantine are to hoist the yellow flag on meeting other vessels at sea, or being within two leagues of the United Kingdom, on penalty of 100*l*.

Masters refusing to answer interrogatories made to ascertain the state of their vessels, to forfeit 200*l*.; or omitting to disclose that they have touched at any infected place, to forfeit 300*l*.; or refusing to convey their vessels to the place appointed for quarantine, or quitting them, or suffering any other person to quit them, forfeit 400*l*.

Persons arriving in any infected vessel, or going on board, and quitting them before discharged from quarantine, to suffer six months's imprisonment, and forfeit 300*l*.

Persons forging or uttering false certificates, required by order in council, to be guilty of felony.

#### APPEARING ABROAD WITH INFECTIOUS DISEASE.

By 1 Jac. I. c. 31, if any person dwelling in any in-

fectured house be commanded by the mayor, or other head-officer of the town, to keep his house, and disobey such command, he shall, though there be no plague or sore upon him, be punished as a vagabond by whipping, and be bound to his good behaviour: but if he have any infectious sore upon him, uncured, he is guilty of felony.

Lord Ellenborough held that it is a misdemeanor at common law to expose a person labouring under an infectious disease, as the small-pox, in the streets or public places, *Rex v. Vantandillo*, 4 M. & S. 73. An indictment lies for lodging the poor in an unhealthy place, *Cald.* 432.

#### SALE OF UNWHOLESOME PROVISIONS.

In general, any practices by which a man's health is injured, or the vigour of the constitution impaired, are punishable; as by selling unwholesome provisions, by the exercise of a noisome trade, which pollutes the air in the neighbourhood, or by the neglect or unskilful management of his physician, surgeon, or apothecary. It is a misdemeanor to give any person injurious food to eat, whether the offender be excited by malice or desire of gain. The 51 Hen. VIII. punishes the sale of *unwholesome* flesh with fine and imprisonment; and, by the 12 Car. II. c. 25, any brewing or adulteration of wine is punished with the forfeiture of 100*l.* if done by the wholesale merchant, and 40*l.* if done by the vintner or retail dealer. By the 1 W. & M. c. 34, it is more generally provided that any person who shall sell wine, by wholesale or retail, who shall adulterate it, or sell it adulterated, shall forfeit 300*l.* for each offence, half to the king, and half to him who shall sue for it, and shall be imprisoned three months.

#### BIGAMY.

Bigamy or polygamy is where a man marries a plurality of wives, or a woman a plurality of husbands.

By 1 Jac. I. c. 11, if any person, being married, afterwards marry again, the former husband or wife being alive, it is felony, but within benefit of clergy. In a prosecution under the statute, the first wife or husband

is not a competent witness; but the second is, because the second marriage is no marriage at all.

The act makes *five* exceptions, in which a second marriage is not felony. 1. Where either party has been continually *abroad* for seven years, whether the party in England has notice of the other being alive or not. 2. Where either party has been absent from the other seven years, *within* this kingdom, and the other party had no knowledge of the other's being alive within that time. 3. Where there is a divorce or separation by sentence in the ecclesiastical court. 4. Where the first marriage is declared absolutely void by any such sentence, and the matrimonial bonds dissolved. 5. And last, where either of the parties was under the age of consent at the time of the first marriage.

In the *three* first cases, the second marriage is void, and the parties merely subject to ecclesiastical censure; in the *fourth* case, the first marriage being lawfully dissolved, the parties may marry a second time; in the *fifth* case, the parties are eligible to marry a second time by not assenting to the first marriage when they attain years of discretion.

By 35 Geo. III. c. 67, persons convicted of bigamy may be transported for seven years.

#### COMMON NUISANCES.

Common nuisances are such offences against the public, either by doing a thing which tends to the annoyance of the community, or by neglecting to do any thing which the common good requires.

Offensive trades and manufactures, which, when injurious to individuals, are actionable, are, when detrimental to the public, punishable by public prosecution, and subject to fine according to the magnitude of the offence.

Keeping of hogs in a city or market-town is indictable as a common nuisance; and, from the offensive effluvia from chandler-shops, they would, doubtless, fall under the same denomination. But it is necessary that they should be kept in such inconvenient parts of the town or city, that they must necessarily annoy the

neighbourhood and impair the enjoyment of life or property.

Disorderly inns or ale-houses, unlicensed stage plays, booths or stages for rope-dancers, mountebanks, and the like, are public nuisances, which may be indicted and fined, 1 *Hawk.* 198. The making and selling of *fire-works* and *squibs*, or throwing them about in any street, is a nuisance, punishable by fine: for the making and selling, 5*l.* and for the throwing or firing, 20*s.* 9 & 10 W. III. c. 7.

By 12 Geo. III. c. 61, no one is to keep more than 200*lbs.* of *gunpowder*, nor any person, not a dealer, more than 50*lbs.* in the cities of London or Westminster, or within three miles thereof; or within any other city, borough, or market-town, within one mile thereof; or within two miles of the king's palaces or magazines; or half a mile of any parish church, on pain of forfeiture, and two shillings a pound (except in licensed mills).

To suffer any *mischievous dog* to go loose or unmuzzled, to the danger and annoyance of the neighbours and passengers, is an indictable offence, and an action for damages will also lie against the owner. But an action cannot be brought against the owner of a dog for biting a person, unless the owner had notice of his having bit somebody at least once before. An action will also lie against a man keeping a dog accustomed to bite sheep.

Making great *noises* in the streets, in the night, by trumpets or otherwise, is a nuisance. By 3 Geo. IV. c. 55, blowing horns or using any other noisy instrument in the streets of the metropolis, for the purpose of hawking or selling any article, subjects to a penalty of not less than 10*s.* nor more than 40*s.*

*Eaves droppers*, or such as listen under walls and windows, and the eaves of houses, and thereupon frame mischievous tales, are punishable by fine and finding sureties for good behaviour. So a *common scold* is a public nuisance to the neighbourhood; for which offence she may be indicted, and, if convicted, may be plunged into the water in an ancient engine for that purpose, called a ducking-stool.

Keeping a common *gaming-house* is a nuisance, and

the keeper may be indicted ; and, by 58 Geo. III. c. 70, persons appearing or acting as masters are to be considered as keepers, and liable accordingly. The 33 Hen. VIII. c. 9, prohibits the keeping any gaming-house for profit, under a penalty of 40s. a day ; merely playing at an inn, where the owner derives no benefit from it, is not within the act, *Dalt.* c. 46. But, by 3 Geo. IV. c. 114, the keeping a *common gaming-house*, a *common bawdy-house*, or a *common ill-governed and disorderly house*, subjects to imprisonment and hard labour in addition to, or in lieu of, any other punishment.

For facilitating the prosecution and suppression of any *common bawdy-house*, the 25 Geo. II. c. 36, provides that if two inhabitants of any parish, paying scot and lot, give notice, in writing, to the constable, of any person keeping a bawdy-house, the constable shall go with them to a justice, and, upon their making oath that they believe the notice to be true, and entering into a recognizance in 20*l.* each to produce evidence, the constable shall enter into recognizance in the sum of 30*l.* to prosecute the same with effect at the next sessions or assizes. Provision is made for the payment of the constable's expenses in the prosecution, and also of 10*l.* to each of the inhabitants, by the overseer of the parish. The party accused may be then bound over to appear, and the magistrates may also take security for their good behaviour in the mean time.

## GAMING.

Gaming, or speculating on the chance of winning or losing money by any play, game, or diversion, is an offence not punishable at common law, unless it is so practised as to be injurious to the public economy ; but, by statute, the legislature has, in many instances, laid it under particular restraints.

By 33 Hen. VIII. c. 9, no apprentice, servant, labourer, or artificer, shall play at tables, tennis, bowls, cards, dice, quoits, or other unlawful sport, except at Christmas, on pain of 20s.; at Christmas, they are to play in their master's house, or presence. Justices, or other head officers, may enter houses suspected of unlaw-

ful games, and fine the gamblers 6s. 8d. and the keepers of such houses 40s. who may be compelled to find sureties not to offend in future.

By 9 Ann, c. 14, all bonds and other securities given for money won at play, or for money lent at play, are void; and all mortgages and incumbrances of land made upon the same consideration fall to the heir of the mortgagor. If any person at one time, or sitting, lose 10*l.* at play, and shall pay the same, or any part thereof, he may recover it back from the winner; if the loser do not sue within three months, any other person may sue the winner for treble the sum so lost, one half to himself, the other half to the poor: in these suits no privilege of parliament is allowed.

Persons having no visible estate, and suspected of living by gaming, may be compelled to give securities for their good behaviour.

By 9 & 10 W. III. c. 17, all lotteries are declared public nuisances; and, by 42 Geo. II. c. 119, if any person shall keep any office or place for lotteries, called *little goes*, or any other lottery not authorized by parliament, or shall knowingly suffer it to be exercised or played at in his house, he shall forfeit 500*l.* All state lotteries were discontinued after the 4 Geo. IV. c. 60, which was the last public lottery sanctioned by parliament.

By several statutes of the reign of Geo. II. all private lotteries, by tickets, cards, or dice, and particularly the games of faro, basset, hazard, roulette, and other games with dice, except backgammon, are prohibited, under a penalty of 200*l.* for him that erects such lotteries, and 50*l.* a time for the player. All raffles and other devices under the denomination of sales, which are equivalent to lotteries, are prohibited, under heavy penalties, by a great variety of statutes.

By 10 Ann, c. 26, persons setting up offices for insurances on marriages, births, and christenings, forfeit 500*l.* and printers advertising, 100*l.* By 8 Geo. I. c. 2, persons setting up offices for sale of houses, lands, goods, or other things, by way of lottery, forfeit 500*l.* Persons selling or delivering tickets in any foreign lottery, forfeit 200*l.* By 18 Geo. II. c. 24, persons losing 10*l.*

at one time, or 20*l.* in twenty-four hours, may be indicted, and fined five times the amount. If any one, by *cheating*, win 10*l.* he shall be deemed infamous, and suffer the same punishment as in case of perjury. Lastly, by 5 Geo. IV. c. 83, all persons *playing* or *betting* in any *open* or *public* place, with any table or instrument of gaming, at any game or pretended game of chance, may be treated as vagrants.

## HORSE-RACES.

Horse-races are a fruitful source of gaming, to prevent which, by 13 Geo. II. c. 19, no plate or match under 50*l.* value shall be run, under a penalty of 200*l.* to be paid by the owner of each horse running, and 10*l.* on such as advertise the plate. At Newmarket and Black Hambleton, however, a race may be run for any sum less than 50*l.* But though such horse-races are lawful, yet they are *games* within the 9 Ann, c. 14, and, consequently, wagers *above* 10*l.* are illegal. So is a cricket-match. A foot-race, and a race against time, have also been held to be games within the statute of gaming, 2 *Wils.* 36. So a wager to travel a certain distance, within a certain time, with a post-chaise, has been considered of the same nature, 6 *T. R.* 499. A wager for *less* than 10*l.* upon an illegal horse-race cannot be recovered by action, *Johnson v. Bann*, 4 *T. R.* 1. Though the owners of the horses may run them for a stake of 50*l.* or more, at a proper place for a horse-race, yet it has been held, if they run them upon the highway, the wager is illegal.

## WAGERS AND BETS.

A *wager* or *bet* is a lawful contract, and recoverable by action, provided it be not made upon unlawful games; or such as are likely to disturb the public peace, to encourage immorality, or to affect the interests, character, or feelings of persons not parties to the wager; or contrary to the general policy and interests of the nation. By 7 Geo. II. wagers relating to the present or future price of stocks are illegal and void. When a person had given 100*l.* upon condition of receiving 300*l.* if



peace were not concluded with France within a certain time, and he afterwards brought his action to recover the 300*l.* it was held that the wager was void, as being inconsistent with general policy; but he was allowed to recover the 100*l.* he had paid under a count for so much money received by the defendant to his use. A wager between two electors upon the success of their respective parliamentary candidates is illegal, because it tends to corrupt the freedom of election, 1 *T. R.* 56. So, also, a person was permitted to recover back his share of a wager, against a stakeholder, upon a boxing-match. But in Easter Term, 1825, C. J. Abbott refused to allow a cause to proceed in which a person sought to recover 100*l.* which had been deposited as a stake on a dog-fight; the Chief-Justice observing all such wagers were illegal. No action will lie on the *mode of playing* any illegal game; and the judge at Nisi Prius may order it to be struck out of the paper, 2 *H. B.* 43.

## CHAP. X.

### *Offences against the Lives of Individuals.*

#### HOMICIDE.

HAVING in the preceding chapters considered all those offences which either affect the government or the public in its collective capacity, we come next to consider those which, in a more peculiar manner, affect and injure the persons of individuals.

Of crimes injurious to the *person*, the principal is HOMICIDE, which is the killing a human being; and is either *justifiable*, *excusable*, or *felonious*. The first has no tinge of guilt at all; the second, very little; but the third is the highest crime that man is capable of committing against a fellow creature.

I. JUSTIFIABLE homicide, which it appears almost inconsistent to include in criminal delinquencies, is of divers kinds, including such as arise from unavoidable necessity or accident, without any imputation of blame or negligence on the party killing. Of this kind is homicide committed in the pursuit of justice, in the exe-

cution of any civil or criminal process ; but in these cases the necessity must be real and apparent ; as that the party could not be arrested, or the riot suppressed, or the deer stolen re-taken, unless homicide had been committed.

Homicide is justifiable, committed in the prevention of any atrocious crime, as an attempt to murder, or to break into a house in the night-time. A woman is justifiable in killing one who attempts to ravish her, and so, too, the husband or father may justify killing a man who attempts a rape on his wife or daughter, but not if he take them together by *consent*, for the one is *forcible* and *felonious*, not the other. Attempting a crime still more abominable may be punished by the death of the unnatural aggressor.

Justifiable homicide reaches not to crimes unaccompanied with *force*, as the picking of pockets, or attempting to break open a house in the *day-time*, without an attempt at robbery. The general principle of the law appears to be this ; that where a crime, in itself *capital*, is endeavoured to be committed by *force*, it is lawful to repel that force by the death of the party attempting it ; but to kill a person in resisting a trespass or misdemeanor would be clearly manslaughter or murder.

II. EXCUSABLE homicide is committed either by *misadventure* or in *self-defence*.

Homicide by *misadventure* is where a man doing a lawful act, without any intention of hurt, unfortunately kills another ; as where a man is at work with a hatchet and the head flies off and kills a bystander, for the act is lawful, and the effect is merely accidental. So where a parent is moderately correcting a child, a master his apprentice or scholar, or an officer punishing a criminal, and death ensue, it is only misadventure ; but if he exceed the bounds of moderation, either in the manner, the instrument, or quantity of punishment, and occasion death, it is manslaughter at least, and may be murder : for the act of immoderate correction is illegal.

As boxing and sword-playing are *unlawful* acts, if either of the parties be killed, such killing is felony, or manslaughter. And, in general, if death ensue from

any idle, dangerous, and unlawful sport, the slayer is guilty of manslaughter.

There seems to be a solid distinction between boxing and fencing, which was adverted to in the case of *Hunt v. Bell*, 1 Bing. 1. To teach and learn to box and fence are equally lawful, they are both the art of self-defence ; but sparring exhibitions are unlawful, because they tend to form prize-fighters, and prize-fighting is illegal.

Homicide in *self-defence*, from a sudden affray, or quarrel, is rather excusable than justifiable in the English law. To excuse this species of homicide, it must appear that the slayer had no probable means, by fleeing, or otherwise, to escape from his assailant.

Formerly, no man was held entirely free from guilt who took away the life of another, without permission of the law ; and it is said that both justifiable and excusable homicide were anciently punished by fine or forfeiture. But the practice now is, in all cases of homicide short of manslaughter or murder, to direct an acquittal.

III. FELONIOUS homicide is the killing of a human creature without justification or excuse, and is either *murder*, *manslaughter*, or *self-destruction*.

#### MURDER.

Murder is defined, or rather described, by Sir Edward Coke, to be, “ when a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the king’s peace, with malice *aforethought*, either expressed or implied.”

Malice *aforethought* is the great criterion by which murder is distinguished from every other kind of homicide, and may be either *express* or *implied*. *Express* malice is that deliberate intention to take away the life of another which is manifested by external signs, by lying in wait, menaces, former grudges, or concerted schemes to do him some personal harm. This takes in the case of DUELLING. If one kill another in a *deliberate* duel, under provocation of charges against his character, however grievous, it is murder in him and his second ; and the bare incitement to fight, though under such pro-

vocation, is a high misdemeanor, *Rex v. Rice*, 3 E. R. 581. If two or more come together to do an *unlawful* act, of which the probable consequence may be bloodshed ; as to beat a man, commit a riot, or to rob a park, and one of them kill a man, it is murder in them all, because of the unlawful act, the evil intended aforethought.

*Implied* malice is that inference which arises from the nature of the act, though no direct malice can be proved ; as where a man deliberately poisons another, the law presumes malice, though no particular enmity can be established. Or, if a master refuse his apprentice necessary food, or treat him with such continued harshness and severity that his death is occasioned thereby, the law will imply malice, and the offence will be murder, *Leach*, 127. So, if a prisoner die by the cruelty or neglect of the goaler, the party offending is criminal in the same degree.

If a man kill another suddenly, without a considerable provocation, the law implies malice. But if the person provoked had unfortunately killed the other by beating him in such a way as showed only an intent to *chastise* and not to kill him, the law so far considers the provocation of contumelious behaviour as to adjudge it only manslaughter, and not murder.

If one, intending to commit a felony, undesignedly kill a man, it is murder. So, if a person give a woman with child a potion to procure abortion, and it operate so violently as to kill the mother, this is murder in the person who gave it.

Although a bare *attempt* to kill is still only a misdemeanor, yet, by a late statute, an attempt to kill by certain means is made a capital felony. Thus, by the 43 Geo. III. c. 58, commonly called Lord Ellenborough's Act, persons who shall *stab* or *cut*, with intent to murder, maim, or disfigure another, or to prevent the arrest of culprits, shall be guilty of **FELONY**, without benefit of clergy. The act also extends the punishment to those who are guilty of malicious shooting at another, in any dwelling house or other place.

By the same statute, *administering drugs*, or using any other contrivance to destroy a living infant, unborn, is

felony, not only in the person who actually perpetrates the offence, but in those who counsel and assist therein. And, though the mother is not *quick* with child, to attempt to procure an abortion, is punishable with fine, imprisonment, whipping, or transportation, for any period less than fourteen years. Women concealing the birth of an *illegitimate* child are liable to two years' imprisonment.

The *punishment of murderers* is now regulated by the 25 Geo. II. c. 37, which directs that the judge shall pronounce sentence immediately after conviction, unless he see cause to postpone it, and direct the execution to be on the next day but one (except that be Sunday, and then on the Monday following,) and that the body be delivered to the surgeons to be dissected; the judge may direct the body to be hung in chains, but in no wise to be buried without dissection. In the interval between sentence and execution, the prisoner must be kept alone, and sustained only with bread and water.

#### MANSLAUGHTER

Is defined the unlawful killing of another, upon a sudden heat of passion, without previous malice expressed or implied.

If, upon a sudden quarrel, two persons fight, and one kill the other, it is manslaughter; and so it is if they, upon such an occasion, go out and fight in a field, for this is one continued act of passion. So, also, if a man be greatly provoked, as by pulling his nose, or by taking another in the act of adultery with his wife, and immediately kill the aggressor, it is only manslaughter. But in every case of homicide upon *provocation*, if there be a sufficient cooling time for passion to subside, and reason to interpose, and the person so provoked afterwards kill the other, this is deliberate revenge, and amounts to murder.

Manslaughter may also arise when in the commission of some *unlawful* act death ensues. As if two persons play at sword and buckler, which is an unlawful game, and one kill the other, it is manslaughter.

So, where a person does an act, lawful in itself, but in an unlawful manner, without due caution and circumspection; as, when a workman flings down a stone, or

piece of timber, into the street, and kills a man, this may be either excusable homicide, manslaughter, or murder, according to the circumstances under which the original act was done. If it were in a country village, where few passengers are, and he called out to all people to have a care, it is misadventure only; but, if it were in London, or other populous town, where people are continually passing, it is manslaughter, although he gave loud warning; and murder if he knew they were passing and gave no warning at all to them, being malice against all mankind.

The distinction between *murder* and *manslaughter* will be illustrated by the case of Francis Smith, who was indicted for murder at the Old Bailey, Jan. 13, 1804. The neighbourhood of Hammersmith had been alarmed by what was supposed to be a ghost. The prisoner went out with a loaded gun, with intent to apprehend the person who personated the ghost; he met the deceased, who was dressed in white, and immediately discharged his gun and killed him. Chief Baron Macdonald, Mr. Justice Rooke, and Mr. Justice Lawrence, were unanimously of opinion that the facts amounted to the crime of murder. For the person who represented the ghost was only guilty of a *misdemeanor*, and no one would have had a right to have killed him, even if he could not otherwise have been taken. The jury brought in a verdict of manslaughter, but the Court said they could not receive that verdict; if the jury believed the witnesses, the prisoner was guilty of murder; if they did not believe them, they must acquit. Upon this, they found a verdict of guilty. Sentence of death was pronounced, but the prisoner was reprieved.

The *punishment* of manslaughter is proportioned to the various shades of delinquency in the offence. By 3 Geo. IV. c. 33, the culprit may be transported for life, or a term of years, or he may be imprisoned and kept to hard labour, for any term not exceeding three years, or he may be dismissed with such pecuniary fine as the Court may think fit to impose.

#### SELF-DESTRUCTION.

A suicide is one that deliberately puts an end to his

own existence, or commits any act, the consequence of which is his own death.

Formerly, the punishment for this crime was ignominious burial in the highway, with a stake driven through the body; but the 4 Geo. IV. c. 32, allows the interment of the suicide in the churchyard, or burial-ground of the parish; requiring, however, the omission of the funeral service, and that the interment shall be made within twenty-four hours from the finding of the inquisition, and take place between the hours of nine and twelve at night.

The usual practice of juries, in cases of self-murder, is to bring in a verdict of *insanity*; judging, probably, that the act of self-destruction is such a strange anomaly in human conduct, such a wide aberration from the principle of self-preservation, which universally actuates sentient beings, as to form of itself unequivocal testimony of deranged or maddened intellect.

#### PETTY TREASON

Consists in a servant killing his master, a wife her husband, or an ecclesiastical person his superior, to whom he owes faith and obedience. The punishment for this offence is to be drawn and hanged. Formerly, women guilty of petty treason were sentenced to be drawn and burnt; by the 30 Geo. III. c. 48, hanging is substituted for the latter part of the punishment.

### CHAP. XI.

#### *Offences against the Persons of Individuals.*

##### RAPE.

RAPE is the offence of having carnal knowledge of a woman by force, against her will, which, by the 18 Eliz. c. 7, is felony, without benefit of clergy.

The carnally knowing and abusing any woman-child, under the age of ten years, in which case the consent or non-consent is immaterial, as by reason of her tender age she is incapable of judgment or discretion, is felony. Carnal knowledge of a child, between ten and twelve years old, with or without consent, is a misdemeanor.

A boy under fourteen years of age is deemed in law incapable of committing a rape, and, it seems, is not punishable.

In an indictment for rape, the party ravished is an admissible witness; but the value of her testimony must be left to the jury. For instance, if the witness be of good fame, if she presently discovered the offence, and made search for the offender; if the party accused fled for it: these are concurring circumstances, which give greater probability to her testimony. But, on the other hand, if she concealed the injury, after she had opportunity to complain of its perpetration; if the place where the fact is alleged to have been committed is where it was possible she might have been heard, and made no outcry: these carry a strong, but not conclusive, presumption that her testimony is false or feigned.

Moreover, an assault to ravish, however shameless and outrageous it may be, unless it amount to some degree of consummation of the deed, is not a rape.

Much difference of opinion has prevailed among legal authorities whether the proof of both penetration and emission is essential to constitute a rape. Prisoners have been repeatedly acquitted on the want of proof of emission, 1 *East*, P. C. 437. In one instance, on the other hand, the prisoner was found guilty under the direction of Mr. Justice Bathurst, who did not consider this fact necessary to the consummation of guilt. But, in *Hill's case*, which was argued in 1781, a large majority of judges decided that *both* circumstances were necessary, though Buller, Loughborough, and Heath, maintained a contrary opinion. This, then, seems to be the stronger opinion; and, at the present day, if no emission took place, it would be more safe to indiot for the *attempt to commit*, by which means a severe punishment might be inflicted.

It is the essential character of this crime, that it must be against the will of the female on whom it is committed. And if a woman be beguiled into her consent, by any artful means, it will not be a rape; and, therefore, having carnal knowledge of a married woman, under circumstances which induced her to suppose it



was her husband, was held, by a majority of judges, not to be a rape, *Russ. Ry. C. C.* 487. However, the crime is not mitigated by showing that the woman yielded, at length, to violence, if her consent were obtained by duress, or threats of murder; nor will any subsequent acquiescence on her part do away with the guilt of the ravisher. It is a rape to force a prostitute against her will; so it is for a man to have forcible knowledge of his own concubine, because the law presumes the possibility of a return to virtue. A man, however, cannot be himself guilty of a rape upon his own wife, for the matrimonial consent cannot be retracted, 1 *Hale*, 629; but he may be criminal in aiding and abetting another in such a design.

All who are present, of both sexes, aiding in the perpetration of rape, are principals in the second degree.

#### UNNATURAL OFFENCE.

Buggery, from the Italian *buggerare*, is a carnal copulation against nature; as a man or woman with a beast, or a man with a man, or a man unnaturally with a woman. It was anciently punished with burning, some say burying alive; but it is now a capital felony, and punished, as other capital felonies, with hanging.

The law requires the same evidence of penetration and completion in this case as in the preceding crime; both parties are equally guilty, as well as all present and assisting therein. If committed on a boy under fourteen, it is felony in the agent only, 1 *Hale*, 47.

Blackstone properly observes on this truly unnatural offence, that it is a "crime which ought to be strictly and impartially proved, and then as strictly and impartially punished. But it is an offence of so dark a nature, so easily charged, and the negative so difficult to be proved, that the accusation should be clearly made out; for, if false, it deserves a punishment inferior only to the crime itself."

#### KIDNAPPING.

This is an inferior description of offence against the

person, and amounts only to a misdemeanor ; it consists in carrying off a man, woman, or child, from their own country, and sending them into another. It is punishable with fine and imprisonment. By 11 & 12 W. III. c. 7, masters of merchant vessels are punishable with three months' imprisonment who, being abroad, force any person on shore, or wilfully leave him behind, or refuse to bring home all such as they carried out, if able and desirous of returning. The 58 Geo. III. c. 38, provides that offences against this statute may be prosecuted by indictment or information in the Court of King's Bench.

## CHILD STEALING.

This has latterly become an offence of more frequent occurrence than the last, and is provided for by a recent statute, the 54 Geo. III. c. 101. If any person shall maliciously, by force or fraud, lead, take, or carry away, or drag, or entice away, any child under the age of ten years, with intent to deprive the parent, or any other person, having the lawful care or charge of such child, of the possession of it ; or with intent to steal any article of apparel, ornament, or value upon the person of such child ; or shall conceal or harbour any child so stolen, every such person and their accomplices shall be guilty of *felony*. The act does not extend to persons who claim possession of the child as its father, or by any other lawful title.

## CHAP. XII.

*Offences against the Habitations of Individuals.*

## ARSON.

THE only two offences that more immediately affect the habitations of individuals are *arson* and *burglary*.

*Arson* is the malicious and *actual* burning of the whole or part of the house, or outhouse, of another, by night or by day.

By 7 & 8 Geo. IV. c. 30, s. 2, if any person unlawfully and maliciously set fire to any church, chapel, house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary ; or

to any building or erection used in carrying on any trade or manufacture, whether the same shall be in possession of the offender or other person, with intent to injure or defraud any person; every such person shall suffer death.

A fire through negligence does not amount to arson; but, by the 6 Ann, c. 31, any servant negligently setting fire to a house or outhouse shall forfeit 100*l.* or be sent to the house of correction for eighteen months.

A person wilfully setting fire to his own house in a town, without injuring or intending to injure another, is a high misdemeanor, though it does not amount to arson, and is punishable by imprisonment and perpetual sureties for good behaviour.

It has been decided that an attempt, or preparation, by a man to set fire to his own house in a town, though the fire be never kindled, is a misdemeanor; and that every attempt to commit a felony is a misdemeanor; and in general, an attempt to commit a misdemeanor is an offence of the same nature. The law adopts the maxim of taking the *will for the deed*, both in treason and misdemeanor.

#### BURGLARY.

Burglary is a capital felony and defined by 7 & 8 Geo. IV. c. 29, s. 11, "if any person shall enter a dwelling-house with intent to commit felony, or being in such dwelling-house shall commit any felony, and shall, in either case, break out of the said dwelling-house, in the *night-time*, such person shall be deemed guilty of burglary." But the 13th section provides that no building, although within the same curtilage with the dwelling-house and occupied therewith, shall be deemed to be part of such dwelling-house for the purpose of burglary, unless there be a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from one to the other.

The new act has not defined the limits of *night-time*, though the nocturnal breaking a dwelling-house with a felonious intent is the essence of the crime.

To constitute burglary, 1. The breaking out must be

in the *night*, or, as it is usually described, it must be so dark you can barely discern a man's face. 2. It must be a *dwelling-house*; that is, a place where some person generally or occasionally resides, so that a warehouse or other unoccupied place is not entitled to the same protection. 3. There must be an *entry* with a *felonious* intent. The *entry* may be by taking out the glass, picking or opening a lock, by lifting the latch, or unloosing any fastening, or even by stepping over the threshold, provided it is with a *felonious* intent, that is, to commit a murder, rape, or robbery: all these are burglarious entries. Lastly, it does not seem, as formerly, that both the entering and breaking out need be nocturnal; if the entering be by day, and the breaking out by night, it is sufficient.

If a servant open and enter his master's door with a felonious design, or if any other person, lodging in the same house, or in a public inn, open and enter another's door, with such felonious intent, it is burglary.

If a person conspire with a robber, and let him in, it is burglary in both. So, also, to knock at the door, and, upon opening it, rush in, with a felonious intent; or, under pretence of taking lodgings, to fall upon the landlord and rob him.

A chamber in a college, or an inn of court, where each occupant has a distinct property, is the *dwelling-house* of the owner. So, even a loft over a stable, used for the abode of a coachman, which he rents for his own use and that of his family, is a place which may be burglariously broken, 1 *Leach*, 305. A burglary may be also committed in a lodging-room, or in a garret, used for a work-shop, and rented together with an apartment for sleeping; and if the landlord does not sleep under the same roof, the place may be laid as the dwelling of the lodger. But if I hire a shop, part of another man's house, and work or trade there, but never lodge there, it is no dwelling-house, nor can burglary be committed therein. Neither can burglary be committed in a tent or booth erected in a market or fair, though the owner may lodge there; for the law protects only permanent edifices.

## CHAP. XIII.

*Offences against Private Property.*

WE come next to that numerous class of crimes and misdemeanors which are directed against the security of private property, and which will occupy the four remaining chapters, under the general heads of—

I. FORGERY.

II. LARCENY.

III. MALICIOUS MISCHIEF.

IV. THE GAME LAWS.

## FORGERY.

FORGERY is the fraudulent making or altering a written instrument, to the detriment of another person, for which the punishment is fine and imprisonment, transportation, or death.

To constitute this offence, it is not necessary the *whole* instrument should be fictitious. Making a fraudulent insertion, alteration, or erasure, in any material part of, a true document, by which another may be defrauded; the fraudulent application of a false signature to a true instrument, or a real signature to a false one; and the alteration of the date of a bill after acceptance, by which its payment may be accelerated, are forgeries.

If a note be made payable at a banker's who fails, it is forgery to introduce a piece of paper over the name of the banker who has failed, containing the name of another banking-house, 2 *Leach*, 1040. Expunging an endorsement on a bank-note with a liquor unknown, is held to be an erasure within the statutes.

The essence of forgery is an *intent to defraud*, and, therefore, the mere imitation of another's writing, the assumption of a name, or the alteration of a written instrument, where no person can be injured, does not come within the definition of the offence. Neither does the using a fictitious name, though for the purpose of concealment and fraud, amount to forgery, unless it were for that precise species of fraud of which the forgery forms a part, *Russ. & Ry. C. C.* 260.

Whether the fraud be effected on the party to whom the instrument is addressed, or whose writing is counterfeited, or upon a third person, who takes it upon the credit it assumes, is immaterial; nor is it of consequence whether the counterfeited instrument be such as, if real, would be effectual to the purpose it intends, so long as there is sufficient resemblance to impose upon those to whom it is uttered. Thus, the fabrication of an order for the payment of a sailor's prize-money is forgery, though it be invalid, as wanting the requisites required by law, 2 *Leach*, 883.

Lastly, to complete the offence, the instrument forged should be parted with, or tendered, or offered, or used in some way to get money or credit upon it. Delivering a box, containing, among other things, forged stamps to the party's own servant, to be forwarded by a carrier to a customer in the country, is an uttering, 4 *Taunt.* 300. But showing a man an instrument, the uttering of which would be criminal, though with the intent of raising a false idea in him of the party's substance, is not an uttering within the statute. Nor will the leaving it afterwards, sealed up, with the person to whom it was shown, under cover, that he may take charge of it, as being too valuable to be carried about, be an uttering or publishing, 4 *Chitty's Bl.* 247, n. 58, 62.

Having thus explained the general characteristics of the offence, we shall next specify the different descriptions of forgery. It would, however, occupy several folio volumes to notice all the statutes and decisions on the subject; of the extent and perplexity of the forgery laws the reader may form some idea when he is told that Mr. Hammond, under the title of "*Forgery*," in his Criminal Code, has enumerated four hundred statutes which contain provisions against the offence. Our object, therefore, will be to compress the more recent acts and decisions, and those which are usually relied upon in criminal prosecutions.

The most comprehensive act for the prevention of forgery is the 45 Geo. III. c. 89, by which, if any person shall falsely make, forge, counterfeit, or alter, or

cause, or procure to be so done, or wilfully act or assist in so doing, any deed, will, testament, bond, obligatory writing, bill of exchange, promissory note, endorsement, or assignment thereon, acceptance of any bill, acquittance, or receipt, either for money or goods, or any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money or delivery of goods, with intent to defraud any person, bodies politic or corporate, whatever; or shall offer, dispose of, or put away any such forged instrument; every person so convicted shall be guilty of felony, without benefit of clergy.

By the 2d section, to forge or alter any Bank of England note, bond, or obligation, or any endorsement; or to dispose of, or demand payment thereof, *knowing the same to be forged*, is FELONY, without benefit of clergy.

By the 6th section, it is made transportation for fourteen years to buy or receive any forged note, bond, &c. knowing the same to be forged, or *knowingly to have in possession*, or in the house, any such note, without lawful excuse, the proof of which to be on the person accused.

Persons making, or using, or having in possession (except officers of the Bank of England), frames for making paper of the description used by the Bank of England, or to make, use, or expose to sale, or assist therein, any such paper, or knowingly to have it in possession; or, by any contrivance, procure the numerical sum of a bank-note to appear in the substance of such paper, are punishable with transportation for seven years.

And, lastly, the same punishment is inflicted on persons who engrave, cut, etch, or scrape upon any plate of metal, wood, or other material, any note of the Bank of England; or shall use such, or knowingly have such in their possession.

STAMPS.—By 55 Geo. III. c. 184, to forge or counterfeit any stamp or die, or expose to sale any vellum, parchment, or paper, impressed with such forgery, or cut, tear, or get off any stamp, with intent to use the

same a *second* time, is felony, without benefit of clergy. It is also a capital offence to forge or counterfeit any plate, stamp, or die, for any almanack, newspaper, stage-coach license; or knowingly to use such forged instrument.

So, also, to counterfeit any mark or die on any *gold* or *silver plate*, or to sell or transpose any such mark, or knowingly to have such in possession, is felony, without benefit of clergy.

By 4 Geo. IV. c. 76, the forgery of documents relating to *marriage registers* and licenses is punishable with transportation for life.

By 3 Geo. III. amended by 4 Geo. IV. c. 46, personating an *out-pensioner* of Greenwich-Hospital, or to procure any other to do the same, subjects the offender to transportation for life, or not less than seven years, or imprisonment only, or imprisonment with hard labour for seven years.

By 57 Geo. III. amended by 5 Geo. IV. c. 107, personating, or procuring to be personated, any *seaman* or other person entitled to wages, or other naval emoluments, or any of his personal representatives, subjects to transportation for life, or not less than seven years, or imprisonment with or without hard labour for seven years. To constitute the offence, a person entitled, or really supposed to be entitled, to wages must be personated; personating a man who never had any connexion with the ship is not an offence within the act.

SEAMEN'S WILLS.—The 57 Geo. III. c. 127, makes it a capital felony to forge or alter any letter of attorney, order, bill, ticket, certificate of service, or other certificate, assignment, last will, or other power or authority, in order to receive, or enable any other person to receive, any wages, or prize-money, due, or supposed to be due to any officer, seaman, or other person, with intent to defraud any person or corporation, and *uttering* such letter of attorney, &c. By 1 & 2 Geo. IV. c. 49, persons procuring others to utter forged letters of attorney, certificate, &c. or to apply for pay on forged wills, &c. are guilty of felony, without benefit of clergy.

It is also forgery to fabricate a will by counterfeiting the name of a pretended testator, who is still living.



A power of attorney for the transfer of government-stock is a *deed* within the 2 Geo. II. c. 25, and a conviction under the statute for the forgery of such a power was held sufficient, *Rex v. Fauntleroy*.

**BILLS OF EXCHANGE.**—On bills of exchange, generally, it may be observed, that it has frequently been determined that to draw, endorse, or accept a bill of exchange, in a fictitious name, is a forgery, *Leach*, 89. So, if a person, with *intent* to defraud, put his own name to an instrument, representing himself to be a different person of that name, he is guilty of forgery. But where a bill of exchange is endorsed by a person in his own name, and another represents himself to be that person, he is not guilty of forgery, but a misdemeanor.

A draft upon a banker in the name of a person who kept no cash at the banker's is a forgery; as it assumes that there was cash at the banker's which the drawer had authority to dispose of.

The 43 Geo. III. c. 139, makes the forging or uttering any *foreign* note, or bill of exchange, or order for payment of money, a single felony, subject to transportation for seven years. In this offence, it is immaterial whether the forgery be in English or a foreign language, or both.

**FORGERIES ON POST-OFFICE.**—By 24 Geo. III. c. 39, and 42 Geo. III. c. 63, forging *franks* on letters, to avoid the payment of postage, or forging the superscription or date upon the superscription, or writing or sending such letter, knowing such forgery, is punishable with seven years' transportation. And, by 54 Geo. III. c. 169, forging Post-Office marks, to avoid payment of postage, is punishable as a misdemeanor, by fine and imprisonment. Lastly, by 3 Geo. IV. c. 97, forging or receiving money for alehouse-licenses, is a misdemeanor. Forging licenses granted to hawkers and pedlars is subject to a penalty of 300*l*. Forging any declaration of return of the premium on a policy of insurance is subject to a penalty of 500*l*. for the *first* offence; the *second* is a felony, and subject to transportation for seven years.

## CHAP. XIV.

*Larceny.*

LARCENY, or theft, is either *simple* or *compound*.

*Simple* larceny is the mere taking the goods of another, without his consent, unaccompanied with any atrocious circumstance; but *compound* or *mixed* larceny also includes the aggravation of taking from the HOUSE or PERSON.

Prior to the late consolidation of the laws of larceny, simple larceny was of two kinds: if the goods stolen were above the value of twelve-pence it was *grand* larceny; if of that value or under it was *petty* larceny. This distinction is abolished by 7 & 8 Geo. IV. c. 29, s. 2, and every larceny, whatever be the value of the property stolen, is deemed to be of the same nature and subject to the same penal adjudication. By this alteration, the offences that heretofore amounted to grand larceny, and which, in consequence, were exempt from the judicial cognizance of various corporate authorities, are now brought within the bounds of their jurisdiction.

The punishment for simple larceny is transportation for seven years, or imprisonment not exceeding two years; to which imprisonment, if the offender be a male, once, twice, or thrice, public or private whipping may be added. In addition to imprisonment, the Court may also award hard labour or solitary confinement. But in no case can the punishment of whipping be inflicted on females; nor on males oftener than thrice.

The application of forfeitures and penalties in *summary proceedings* under the 7 & 8 Geo. IV. is provided for in the 56th section. Every forfeiture for the value of the property stolen, or for the amount of injury done, is to be paid to the party aggrieved, if known, *except where such party shall be examined in proof* of the offence; and, in that case, or where the aggrieved party is unknown, the forfeiture shall be applied in the same manner as a penalty, and every sum imposed as a penalty is to be applied to the general rate of the county. Persons summarily convicted, not paying, may be committed at the rate of two calendar months for the non-payment of sums under 5*l*.

Offenders in the act of committing any offence punishable by indictment or summary procedure (except that of angling in the day-time) may be apprehended, *without a warrant*, by the aggrieved party, or his servant, or any person authorized by him, or by any peace-officer, and carried before a magistrate. Upon the oath of one credible witness, a search warrant may be granted, as in the case of stolen property.

No substantive alteration has been made in the punishment of larceny: before the new act the punishment of grand and petty larceny was the same, namely, transportation for seven years, or imprisonment; with this distinction, that as grand larceny is capital at common law, and the benefit of clergy was available only once; on a second conviction the punishment might be death. Whereas, petty larceny, however, often repeated, could never be capital. In practice, however, the punishment of death was never inflicted for a repetition of mere theft; and as a set off to this apparent mitigation of the criminal code under the new law, the 7 & 8 Geo. IV. c. 28, s. 11, provides that, on a second conviction for a minor felony, the offender may be *transported for life*. So that in lieu of the ancient punishment of death, on the second conviction for larceny, the offender may be transported for life; but this second punishment cannot be inflicted by the courts whose powers are limited to the infliction of the punishment before mentioned for simple larceny. For other observations on the new acts, see before, p. 318.

Upon a conviction for larceny, it is usual to order immediate restitution of such goods as are brought into Court, or the party may peaceably retake his goods wherever he happen to find them; or, if the offender be convicted on the evidence of the owner of the goods, and afterwards be pardoned, the owner may bring trover against him, or against any one in whose possession the goods may be found after the conviction. But no action will lie against a man who may have fairly purchased them in open market, and sold them before the conviction, notwithstanding the owner gave him notice of the robbery while they were in his possession.

By 7 & 8 Geo. IV. c. 29, s. 57, the owner of stolen property, prosecuting either the thief or receiver to con-

viction, the Court may award writs of restitution of the property, or order restitution in a summary manner; but this does not extend to any valuable security or negotiable instrument, *bonâ fide* taken for a valuable consideration, without notice or reasonable cause of suspicion before the award or order of the Court.

Having made these preliminary observations on the general nature of larceny, we shall now speak of the several offences under this head, beginning with those which do not involve any attack on the *house* or *person*, and which amount only to

### *Simple Larceny.*

To constitute this species of larceny, besides the *carrying away*, there must be a *fraudulent intent* to convert the property to the offender's use at the time of taking possession. In all cases where horses or carriages are hired and never returned, if the jury be of opinion, from the circumstances, that the person to whom they are delivered intended at the time of the hiring never to restore them, he is guilty of felony. But it is not so if the design of appropriating them to the offender's use was conceived and executed *subsequently* to the hiring.

As to the *carrying away* necessary to the offence, a bare removal from the place in which the goods are deposited is sufficient. So, if a thief intending to steal plate, take it out of the chest in which it was laid, and lay it down upon the floor, but is surprised before he can make his escape, it is larceny. When a man snatched an ear-ring from a lady's ear, and afterwards dropped it in her hair, it was held a sufficient asportation to constitute a robbery. The removal of a parcel from one end of a waggon to another, with an intent to steal, amounts to a larceny. But where a bale of goods was raised and placed upon end, this was not thought to be a sufficient carrying away, there not being a complete removal from the place it before occupied.

When a person has *lawfully* obtained possession of goods under a charge of keeping them, he will be guilty of larceny at common law in embezzling them. Thus,

if a master deliver property into the hands of a servant for a special purpose, as to leave it at the house of a friend, or to get change, or deposit with a banker, the servant will be guilty of felony in applying it to his own use, 2 *Leach*, 870. And if several persons play together at cards, and deposit money for that purpose, not parting with their property therein, and one sweep it all away and take it to himself, he will be guilty of theft, if the jury find that he acted with a felonious design.

The distinctions on this subject are extremely numerous and subtle; what has been said will give a general idea of the nature of the offence, and we shall now enumerate the several larcenies known to our laws, most of which have been consolidated and described in the 7 & 8 Geo. IV. c. 29, entitled an act "*For Consolidating and Amending the Laws in England relative to Larceny and other Offences connected therewith.*" As we shall frequently have to refer to this act, to avoid repetition, we shall only specify the section from which the several clauses are abstracted. Some of the offences included in the act have been already mentioned under the heads of arson, burglary, and public records; others will fall under the head of game laws. No alteration has been made in the several acts relating to the Post-Office, the Public Revenue, the Bank of England, South Sea Company; or Naval, Military, Victualling, or other public stores, except the 31 Eliz. c. 4, and 22 Car. II. c. 5, which are repealed by the 7 & 8 Geo. IV. c. 27.

#### STEALING SECURITIES FOR MONEY OR WARRANTS FOR GOODS.

By 7 & 8 Geo. IV. c. 29, if a person steal any tally, order, or other security, entitling or evidencing the title to any share or interest in a public stock or fund, whether of this kingdom or a foreign state, or in a fund of any body corporate, company, or society, or to any deposit in any savings' bank; or steal a debenture, deed, bond, bill, note, warrant, order, or other security for money or for payment of money; or steal a warrant or order for the *delivery or transfer* of goods or valuable thing: every such offender shall be deemed guilty of

## BANKERS, &c. EMBEZZLING MONEY. 387

felony, of the same nature, and punishable in the same manner, as if he had stolen any chattel or goods of the like value with that represented or evidenced in any of the foregoing instruments. It is also enacted, that, throughout the act, each of the several documents enumerated shall be deemed to be included under the words, "valuable security," s. 5.

### BANKER, MERCHANT, BROKER, ATTORNEY, OR AGENT, EMBEZZLING MONEY.

If any money, or security for the payment of money, be entrusted to any banker, merchant, broker, attorney, or *other agent*, with any direction, *in writing*, to apply such money, or part thereof, or the proceeds, for any purpose *specified in such direction*, and he shall, in violation of good faith, and contrary to the purpose so specified, in anywise convert to his own use or benefit such money, security, or proceeds, or any part thereof, every such offender shall be guilty of a misdemeanor, liable, at the discretion of the Court, to be transported for any term not exceeding fourteen years, nor less than seven years, or to suffer such other punishment, by fine or imprisonment, or by both, as the Court shall award, s. 49.

The same punishment is enacted, if any banker, &c. sell, negotiate, transfer, pledge, or in any manner convert to his own use any chattel, valuable security, or power of attorney, for the transfer of stock entrusted to him for safe custody, or other *special* purpose.

But this does not affect trustees nor mortgagees; nor is any banker, merchant, broker, attorney, or other agent, restrained from receiving money actually due upon any valuable security, in the same manner as prior to the act; nor from selling any security or effects in his possession, upon which he may have a lien, to the extent of satisfying his lien.

Factors or agents pledging for their own use any goods, or documents relating to goods, entrusted to them for sale, are liable to transportation for fourteen years, or fine and imprisonment. But this does not apply, if there be a sum justly due from the principal, and the

factor or agent does not pledge beyond the amount so due, *s.* 51.

These provisions as to agents do not lessen any remedy an aggrieved party had prior to this act: but the conviction of an offender cannot be adduced against him in any action at law or suit in equity; nor can any agent be convicted in consequence of evidence he may have been *previously* compelled to disclose in any civil suit or in any examination in bankruptcy.

#### CLERKS AND SERVANTS STEALING FROM THEIR EMPLOYERS.

If a clerk or servant steal any chattel, money, or *valuable security*, belonging to or in the possession or power of his master, every such offender shall be liable to be transported for any term not exceeding fourteen years, nor less than seven years, or imprisoned, with or without whipping, three years, *s.* 46.

If a clerk or servant, or any person employed in that capacity, in virtue of such employment, receive or take into his possession any chattel, money, or valuable security, on account of his master, and fraudulently embezzle the same, or any part thereof, he shall be deemed to have feloniously stolen it, and be liable to the same punishment as last mentioned, *s.* 47.

In this case the offender may be proceeded against for any number of *distinct* acts of embezzlement, not exceeding three, which he may have committed against the same master within six calendar months; and in the indictment, except where the offence relates to any chattel, it shall be sufficient to allege the embezzlement to be of *money*, without specifying any particular coin or valuable security.

#### OFFICERS AND SERVANTS IN THE BANK OF ENGLAND AND POST-OFFICE.

By 15 Geo. II. c. 13, officers or servants of the Bank of England secreting or embezzling any note, bill, bond, money, securities, or effects, entrusted to them, or with the company, are guilty of felony, without clergy.

It has been before explained (p. 320) that all felonies

without benefit of clergy are now capital offences, and punishable with death.

By 5 Geo. III. c. 25, & 7 Geo. III. c. 5, if any officer, servant, or person whatever, employed in the Post-Office, secrete, embezzle, or destroy any letter, packet, or bag of letters with which he shall be entrusted, containing any note, bill, or security for money, or shall steal and take out the same from any letter or packet, he shall suffer DEATH; or, if he shall destroy any letter or packet with which he has received money for the postage, or shall *advance the rate* of postage on any letter or packet, sent by the post, and secrete the money received by such advancement, he is guilty of felony.

By 5 Geo. IV. c. 20, any clerk, agent, sorter, letter-carrier, or post-boy, or other persons employed about the Post-Office, embezzling, destroying, or secreting any printed votes, or proceedings in parliament, or newspaper, is guilty of a misdemeanor, and subject to fine and imprisonment.

## ROBBING THE MAIL.

By 5 Geo. III. c. 25, and 7 Geo. III. c. 50, whoever robs, of any letter or packet, any mail in which letters are sent by the post, or any house, or place for the receipt and delivery of letters or packets, is guilty of felony, and shall suffer death, without clergy.

## STEALING CERTAIN GOODS IN PROCESS OF MANUFACTURE.

By 7 & 8 Geo. IV. c. 29, s. 16, if a person steal to the value of 10s. any goods, or article of silk, woollen, linen, or cotton, or of any or more of these materials mixed with each other, or mixed with any other material, whilst exposed during any process of manufacture in any *building, field, or other place*, such offender shall be liable to be transported for life, or not less than seven years, or imprisoned, with or without whipping, for not exceeding four years.

## STEALING FROM VESSELS.

By 7 & 8 Geo. IV. c. 29, s. 17, persons stealing any



goods or merchandize in any vessel, barge, or boat of any description whatever, in any port of entry or discharge, or upon any navigable river, canal, or creek communicating therewith; or stealing from any dock, wharf, or quay adjacent thereto; shall be liable to transportation for life, or not less than seven years, or imprisonment, with or without whipping, for not more than four years.

#### PLUNDERING SHIPWRECKED VESSELS.

If a person plunder or steal any part of a ship or vessel which is in distress, wrecked, stranded, or cast on shore, or any goods or articles belonging thereto, every such offender shall suffer DEATH. Provided that, when articles of *small value* shall be stranded, or cast on shore, and shall be stolen without circumstances of cruelty, outrage, or violence, the offender may be prosecuted for simple larceny.

Persons in possession of shipwrecked goods may be apprehended, and not giving a satisfactory account how they come in possession of them, the justice may order them to be delivered to the owner; and the offender, over and above the value of the goods, to forfeit any sum not exceeding 20*l*.

Persons offering shipwrecked goods to sale may be seized by the person to whom they are offered, or by any officer of the customs or excise, or peace-officer, and be dealt with in the same manner as last-mentioned, ss. 18, 19, 20.

#### STEALING CATTLE.

If a person steal any horse, mare, gelding, colt or filly; or any bull, cow, ox, heifer, or calf; or any ram, ewe, sheep, or lamb; or wilfully kill any of such cattle, with intent to steal the carcass, or skin, or any part of the cattle so killed, every such offender shall be guilty of felony, and suffer death, s. 25.

#### STEALING DOGS, BEASTS, OR BIRDS.

If a person steal any dog, or steal any beast or bird *ordinarily kept in a state of confinement*, not being

the subject of larceny at common law, every such offender, being convicted before a justice of the peace, shall, for the *first* offence, forfeit and pay, over and above the value of the dog, beast, or bird, such sum of money, not exceeding 20*l.* as to the justice shall seem meet: and if a person so convicted shall be guilty a *second* time, he shall be committed to the common gaol, or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice shall think fit; and if such subsequent conviction shall take place before two justices, they may further order the offender to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction, s. 31.

By 32d section, the punishment is the same if persons *have in their possession* any such dog, or beast, or the skin thereof, or any bird, or the plumage thereof, knowing it to have been stolen.

Persons unlawfully killing, wounding, or taking any HOUSE-DOVE, or PIGEON, under such circumstances as do not amount to larceny at common law, shall forfeit, over and above the value of the bird, any sum not exceeding 2*l.* s. 33.

The offences of stealing deer, hares, and conies will be included in the chapter on the *Game Laws*.

#### TAKING OR DESTROYING FISH.

If a person unlawfully and wilfully take or destroy any fish in any water which shall run through, or be in any land belonging to the dwelling-house of any person, being the owner of such water, or having a right of fishery therein, every such offender shall be guilty of a misdemeanor: and if any person shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as afore-said, but which shall be *private property*, or in which there shall be any private right of fishery, every such offender shall forfeit, over and above the value of the fish, such sum of money, not exceeding 5*l.* as to the convicting justice shall seem meet. Nothing in this clause

extends to persons *angling in the day-time*; but persons angling, in the day-time, in water of the first description, are made subject to a penalty of *five pounds*; or, in water of the second description, to a penalty of *two pounds*.

Persons found angling against the provisions of this act, the owner of the ground, water, or fishery, or his servant, may demand the fishing implements of the offender, and if he refuse to deliver them, they may be seized for the use of the owner: but persons whose implements are so seized are excused from the payment of any penalty or damage, *ss. 34, 35*. For the application of penalties under this act, see before, page 383.

#### STEALING FROM OYSTER-BEDS.

If a person steal any oysters or oyster brood from any oyster-bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, every such offender shall be deemed guilty of larceny; and if any person shall unlawfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any such oyster fishery, for the purpose of taking oysters or oyster brood, although none shall be actually taken, or shall, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, every such person shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both; such fine not to exceed 20*l.* and such imprisonment not to exceed three calendar months: but nothing shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument, or engine adapted for taking floating fish only, *s. 36*.

#### STEALING FROM CERTAIN MINES.

If a person steal, or sever, with intent to steal, the ore of any metal, or any lapis caliminaris, manganese or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal from any mine, bed, or vein, such offender shall be guilty of felony, punishable with transportation for seven years, or imprisonment, with or without whipping, for two years, *s. 37*.

### STEALING PALISADES AND FIXTURES IN BUILDINGS OR GROUNDS.

If a person steal or rip, cut or break, with intent to steal any glass or woodwork, or any lead, iron, copper, brass, or other metal, or any utensil or fixture made of any other material, belonging to, or fixed to any building, or any thing made of metal, fixed in any land, being private property, or for a fence to any dwelling-house, garden, or area, or in any square, street, or other place dedicated to public use or ornament; every such offender shall be guilty of felony, punishable with transportation for seven years, or imprisonment, with or without whipping, for two years, *s.* 44.

### STEALING TREES AND SHRUBS.

If a person steal, cut, break, root up, or otherwise destroy, or damage, with intent to steal, any tree, sapling, shrub, or underwood, growing in any *park, pleasure-ground, garden, orchard, or avenue, or in any ground belonging to any dwelling-house*; every such offender, in case the value of the article stolen, or injury done, amount to ONE POUND, shall be guilty of felony, punishable with transportation for seven, or imprisonment, with or without whipping, for two years; or, in case the article be growing in *any other situation* than those mentioned, and exceed the value of FIVE POUNDS, the offender shall be liable to the same punishment.

Stealing, &c. any of the last mentioned articles, *wheresoever growing*, above the value of ONE SHILLING, the offender shall, over and above the value of the article or amount of injury done, forfeit, for the *first* offence, not exceeding 5*l.*; for a *second*, be committed to hard labour to the house of correction, for any time not exceeding twelve calendar months, and, once or twice, public or private whippings may be inflicted, if the conviction be before two magistrates; for a *third* offence, the offender may be punished with transportation or imprisonment, as in case of simple larceny, *ss.* 38, 39.

### STEALING A FENCE, STILE, OR GATE.

If a person steal, cut, break, or throw down, with intent to steal any part of a live or dead fence, or any

wooden post, pale, or rail, used as a fence, or any stile or gate; the offender shall, for a *first* offence, over and above the value of the articles, forfeit any sum not exceeding 5*l.* and for a *second* offence, be committed to hard labour for not exceeding twelve calendar months, and if the second conviction be before two magistrates, once or twice public or private whipping may be ordered, *s.* 40.

If the whole or part of a tree, sapling, or shrub; or any live or dead fence, post, pale, rail, stile or gate, of the value of TWO SHILLINGS, *be found in the possession* of any person, or on his premises, with his knowledge, and such person is unable to satisfy a justice that he came lawfully by the same, he may, over and above the value of the article, be convicted in the forfeiture of any sum not exceeding 2*l.* *s.* 41.

#### ROBBING GARDENS AND ORCHARDS.

If a person steal, destroy, or damage with intent to steal, any plant, root, fruit, or vegetable production, growing in any *garden, orchard, nursery ground, hot-house, greenhouse, or conservatory*, every such offender shall, at the discretion of the justice, either be committed to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six calendar months, or else pay, over and above the value of the article stolen, or the amount of the injury done, any sum not exceeding TWENTY POUNDS. On a *second* conviction, the offender may be transported for seven years, or imprisoned, with or without whipping, not exceeding two years.

And if a person steal, destroy, or damage with intent to steal, any cultivated root or plant, used for the food of man or beast, or for medicine, distilling or dying in any manufacture, and growing in any *land, open or enclosed, not being a garden, orchard, or nursery-ground*, every such offender may be committed, either to or without hard labour for not exceeding one calendar month, or over and above the value of the article stolen or injured, shall pay not exceeding 20*s.* On a *second* conviction, the offender may be imprisoned six months, with or without whipping, *ss.* 42, 43.

## ROBBING GRAVES.

The new statute on larceny has not altered the law on this subject, and consequently no existing provision renders the mere stealing or taking a dead body an offence. Unless there be some property in the thing taken, and an owner, no theft can be committed; yet, if the owner be unknown, provided there be a property, it is larceny to steal it. This is the case of stealing a shroud out of a grave, which is the property of those who buried the deceased; but stealing the body itself, which has no owner, is no felony, unless some of the grave-clothes be taken. The offence, however, when committed for the purpose of dissection, is punished as a misdemeanor. *Rex v. Lynn*, 2 T. R. 733.

*II. Compound Larceny.*

MIXED or compound larceny consists in taking from the HOUSE or PERSON. First, of larceny from the person, and then of larceny from the house.

Larceny from the person is either by *privately* stealing or by *open* and *violent* assault, which is termed ROBBERY, and consists in the open and forcible taking from the person of another money or goods.

The different kinds of larceny from the person, whether by actual robbery, by assault with intent to rob, or by simply stealing from the person, or with force and menaces, with intent to steal, demanding the property of another, are provided for by the 7 & 8 Geo. IV. c. 29, s. 6; the one being made a capital, the other a minor felony.

According to this statute, if any person shall ROB another of any chattel, money, or valuable security, he *shall suffer death as a felon*; and if any person shall steal any such property from another, or shall assault another, with *intent* to rob him, or shall, with menaces, or by force, demand such property with intent to steal the same, he shall be guilty of felony, and liable to be transported for life, or not less than seven years, or imprisoned, with or without whipping, for not exceeding four years.

To constitute the former of these offences, -there must be a *forcible* taking, otherwise it is no robbery, but any the least degree of force which inspires fear is sufficient. The value of the thing taken is immaterial; a penny, as much as a pound, thus forcibly extorted, makes a robbery.

It must be a taking from the *person*, as a horse whereon a man is riding, or money out of his pocket; or else openly and before his face, as if a thief having first assaulted me, takes away my horse that is standing by me, or, having put me in fear, drives away my cattle.

*Actual* violence to the person, or exciting fear in the mind, is not necessary to constitute a robbery. For if a man, with cutlass under his arm, or pistol, demand and obtain the money of another without touching the person, it is a robbery. So, also, if a man threaten another to accuse him of an unnatural crime, and by that means obtain money, it is a robbery, though from conscious innocence the party attacked may not have felt any existing fear in his mind.

#### HOUSE-BREAKING AND STEALING IN A HOUSE.

By 7 & 8 Geo. IV. c. 29, s. 12, if a person break and enter any dwelling-house, and steal therein any chattel, money, or valuable security to any value whatever; or steal any such property to any value whatever in any dwelling-house, any *person therein being put in fear*; or steal in any dwelling-house any chattel, money, or valuable security to the value in the whole of FIVE POUNDS or more; every such offender shall suffer death as a felon.

This repeals the 39 Eliz. c. 15; which made stealing in a dwelling-house in the day-time, and no one put in fear, to the value of 5s. a capital offence.

The new act next describes what buildings are part of a house necessary to constitute a capital felony; by enacting that no building, although within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house for the purpose of burglary, housebreaking or stealing

therein, unless there be a communication between such building and dwelling-house, either *immediate*, or by means of a *covered* and *enclosed* passage leading from the one to the other.

The 14th section provides for robbing buildings within the curtilage of a house; though not forming part of the house agreeably to this definition, by enacting that if a person break and enter any building, and steal any chattel, money, or valuable security, within the curtilage, and occupied therewith, but not a part of the dwelling-house, as last described, he shall be liable to be *transported for life*, or not less than seven years, or imprisoned, with or without whipping, for not exceeding four years.

#### ROBBERY IN A SHOP OR COUNTING-HOUSE.

By 7 & 8 Geo. IV. c. 25, s. 15, if a person break and enter any shop, warehouse, or counting-house, and steal therein any chattel, money, or valuable security, he shall, on conviction, be liable to be *transported for life*, or not less than seven years, or imprisoned, with or without whipping, for not exceeding four years.

The same construction of this part of the statute will, of course, be followed as in that of the 10 & 11 W. III. c. 23, which it repeals, and in which it has been held that a shop or warehouse used merely as a repository for goods and not for sale is excluded from the act.

#### TENANTS AND LODGERS ROBBING A HOUSE OR APARTMENT.

By 7 & 8 Geo. IV. c. 29, s. 45, if a person steal any *chattel* or *furniture* let to him to be used with any house or lodging, he shall be guilty of felony, subject to transportation for seven years, or imprisonment, with or without whipping, for two years.

In this offence it is immaterial whether the *letting* of the house or apartment be to the husband or wife, or to some person authorised by them.

#### SACRILEGE.

By 7 & 8 Geo. IV. c. 29, s. 10, if a person break and enter any church or chapel, and steal therein any chat-



tel, or having stolen any chattel in any church or chapel, and break out thereof, he shall, on conviction, *suffer death as a felon.*

## CHAP. XV.

### *Malicious Mischief.*

MALICIOUS mischief is an injury done to property, from a spirit of wantonness or revenge, and although it is, in general, only at common law a trespass, it is, by recent statutes, considered a capital crime, and made penal in the highest degree. In the constitution of the offence, it is not essential the offender should be actuated by *malice towards the owner*; the essence of the crime consists in the injury inflicted on the possessions of individuals, and the punishment is proportioned to the magnitude of the damage sustained, and the difficulty, from the peculiar nature of the property, its unavoidable exposure, or otherwise, of guarding against the perpetration of the outrage.

Most of the statutes on this subject have been superseded by a law of the last session, the 7 & 8 Geo. IV. c. 30, intituled, *An Act for Consolidating and Amending the Laws of England relative to Malicious Injuries to Property.* The provisions of this act, as well as those which have not been repealed, or only partially repealed by the new statute, we shall bring together, so far as they refer to the subject of this chapter. The powers of the New Act, as to the apprehension of offenders, the application of forfeitures, and the infliction of hard labour or solitary confinement, together with imprisonment, are similar to those mentioned page 383, in the 7 & 8 Geo. IV. c. 29.

#### KILLING, MAIMING, OR ILL-TREATING CATTLE.

By 7 & 8 Geo. IV. c. 30, s. 16, if a person unlawfully and maliciously kill, maim, or wound any *cattle*, he is guilty of felony, punishable with transportation for life, or not less than seven years, or to imprisonment, with or without whipping, for not more than four years.

In the 9 Geo. I. c. 22, which this enactment super-

## DAMAGING ANY MINE OR SHAFT. 399

sedes, the word "*cattle*" included horses, mares, colts, asses, and pigs.

By 3 Geo. IV. c. 71, if a person *wantonly* and *cruelly* beat, abuse, or ill-treat any horse, mare, gelding, mule, cow, heifer, steer, sheep, or *other cattle*, he shall forfeit not exceeding 5*l.* nor less than 10*s.*; or, in default of payment, be committed to the house of correction for not exceeding three months. Prosecutions under this act must be within ten days. No order or proceeding of any justice shall be quashed or vacated for want of form. In case of frivolous and vexatious complaints, the party shall pay to the person complained of 20*s.*

## DESTROYING SILK, WOOLLEN, LINEN, OR COTTON IN THE LOOM, OR MACHINERY.

By the 7 & 8 Geo. IV. c. 30, s. 3, if any person unlawfully and maliciously cut or damage any article containing *silk, woollen, linen, or cotton*; or any framework-knitted piece, stocking, hose, or lace, being in the loom or frame, or on any machine, engine, rack, or tenters, or in any process of manufacture; or cut or damage any warp, shute of silk, woollen, linen, or cotton, or any one or more of those materials mixed with each other, or with any other material; or any loom, frame, machine, engine, rack, tackle, or implement, employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing such goods or articles; or by force enter any house, shop, building, or place, with intent to commit any of these offences; every such offender shall be guilty of felony, subject to transportation for any term not less than seven years, or imprisoned, with or without whipping, for not exceeding four years, s. 3.

Destroying *threshing, or any other machinery than of the description last mentioned*, subjects the offender to transportation for seven years, or imprisonment, with or without whipping, for two years, s. 4.

## DAMAGING ANY MINE OR SHAFT.

Persons maliciously *setting fire* to any mine of coal, or cannel coal, are guilty of felony, punishable with death, s. 5. If a person cause water to be conveyed into a





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mine, or into a passage communicating therewith, with intent to destroy or damage such mine, or to hinder the working, or, with the like intent, pull down or obstruct any airway, waterway, drain, pit, level, or shaft, belonging to a mine, every such offender shall be guilty of felony, and liable to be transported for seven years, or imprisoned, with or without whipping, for two years. But this does not apply to damage unavoidably committed in working any neighbouring mine, s. 6.

The offender is subject to a like punishment in destroying any steam or other engine for sinking, draining, or working a mine; or any staith, building, or erection used in conducting the business of a mine, or a bridge, waggon-way, or trunk for conveying minerals, whether such engine or works be completed or in an unfinished state, s. 7.

#### RIOTERS DESTROYING BUILDINGS OR MACHINERY.

If persons, riotously and tumultuously assembled, pull down, or begin to demolish any church or chapel for religious worship; or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary; or any building or erection used in carrying on any trade or manufacture; or any machinery employed in any manufacture, or for sinking, draining, or working any mine; or any staith, building, or erection used in conducting the business of any mine; or any bridge, waggonway, or trunk; every such offender shall suffer death as a felon, s. 8.

#### DESTROYING OR DAMAGING SHIPS.

If a person set fire to, or in any wise destroy any ship or vessel, whether the same be complete or in an unfinished state, or set fire to, cast away, or in anywise destroy any ship or vessel, with intent to prejudice the owner or underwriter, or injure any goods on board the same, every such offender shall suffer death as a felon, s. 9.

Damaging a ship or vessel *otherwise than by fire*, subjects the offender to transportation for seven years, or imprisonment, with or without whipping, for two years.

Exhibiting false signals to a vessel, to bring her into danger, or to do any thing tending to destroy a vessel in distress, or to injure any vessel or her cargo, wrecked or stranded, subjects the offender to the *punishment of death*, ss. 10, 11.

## SEA-BANKS AND WORKS ON ANY RIVER OR CANAL.

If a person break down any sea-bank, or the bank of any river, canal, or marsh, whereby lands are overflowed, damaged, or endangered; or destroy any lock, sluice, floodgate, or other work on any navigable river or canal; every such offender shall be guilty of felony, subject to transportation for life, or not less than seven years, or to imprisonment, with or without whipping, for not exceeding four years.

If a person remove any pile, chalk, or other material, used for securing any sea-bank, or the bank of any river, canal, or marsh, or open any flood-gate, or do any injury to a navigable river or canal, with intent to obstruct the carrying on, completing, or maintaining the navigation, every such offender shall be liable to transportation for seven years, or imprisonment, with or without whipping, for not exceeding two years, s. 12.

Persons destroying or injuring any PUBLIC BRIDGE, so as to render it dangerous or impassable, are subject to *transportation for life*, or not less than seven years, or imprisonment, with or without whipping, for not more than four years, s. 13.

## TURNPIKE-GATE OR TOLL-HOUSE.

If a person destroy or injure any turnpike-gate, or any wall, chain, rail, post, bar, or fence; or any house or weighing-engine connected therewith, he shall be guilty of a misdemeanor, punishable with transportation, fine or imprisonment, or both, s. 14.

## FISH-POND OR MILL-DAM.

To destroy the dam of any fish-pond, or any water which is private property, or in which there is any private right of fishery, with intent to destroy the fish; or to put any lime or other noxious material in any pond

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or water, with similar intent; or to destroy the dam of any MILL-POND, subjects the offender to transportation for seven years, or to imprisonment, with or without whipping, for two years, s. 15.

### SETTING FIRE TO CORN, HEATH, OR FURZE.

If a person maliciously set fire to any stack of corn, grain, pulse, straw, hay, or wood, he is guilty of felony, *punishable with death*; and if he set fire to any crop of corn, grain, or pulse, whether standing or cut down, or to any part of a *wood, coppice, or plantation of trees*, or to any *heath, gorse, furze, or fern*, he is subject to transportation for seven years, or to imprisonment, with or without whipping, for not more than four years.

The 7 & 8 Geo. IV. has not repealed the sections of the 11 Geo. II. c. 22, which enact that, to use any violence in order to deter any person from buying corn or grain; to seize any carriage or horse carrying grain or meal to or from any market or sea-port, or to use any outrage with such intent; or to scatter, take away, spoil, or damage such grain or meal; shall be punished, for the *first* offence, with imprisonment and public whipping: and the *second* offence, as well as that of destroying any granary, where corn is kept for exportation, or taking away, or spoiling grain or meal in such granary, or in any ship, boat, or vessel intended for exportation, is felony, subject to transportation for seven years.

### DESTROYING HOP-BINDS.

By 7 & 8 Geo. IV. c. 30, s. 18, persons maliciously cutting or destroying any hop-binds growing on poles in any plantation of hops, are liable to *transportation for life*, or to imprisonment, with or without whipping, for not more than four years.

### DESTROYING TREES AND SHRUBS.

If a person maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, shrub, or underwood growing in any *park, pleasure ground, garden, orchard, or avenue*, or in any ground belonging to any dwelling-house, every such

## FRUIT OR VEGETABLES IN A GARDEN. 403

offender, in case the amount of the injury done exceed the sum of ONE POUND, shall be guilty of felony, subject to transportation for seven years, or to imprisonment, with or without whipping, for two years. And persons are made liable to the same punishment, who injure, in like manner, any tree, shrub, &c. growing in any *other situation* than that described, and above the value of FIVE POUNDS, s. 19.

If a person injure, in like manner, any tree, shrub, &c. *wheresoever growing*, the injury done being to the amount of ONE SHILLING, shall, on conviction before a justice of the peace, for the *first* offence, pay over and above the amount of the injury done, any sum not exceeding five pounds; for a *second* offence, be committed to hard labour for not exceeding twelve calendar months; and if such second conviction be before two justices, they may order the offender to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction; for a *third* offence, the offender may be transported for seven years, or imprisoned, with or without whipping, for two years, s. 20.

### DESTROYING FRUIT OR VEGETABLES IN A GARDEN.

Persons maliciously destroying or injuring, with intent to destroy, any plant, root, fruit, or vegetable production, growing in any *garden, orchard, nursery-ground, hothouse, greenhouse, or conservatory*, may, on conviction before a justice of peace, be imprisoned, to or without hard labour, for any term not exceeding six calendar months, or else pay over and above the amount of the injury done, any sum not exceeding twenty pounds; on a *second* conviction, it is FELONY, subject to transportation for seven, or imprisonment for two years, s. 21.

If any person destroy, or damage, with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, distilling, or dying, or for or in the course of any manufacture, and *growing in any land, open or enclosed, not being a garden, orchard, or nursery-ground*; every such offender, being convicted before a justice of the peace, shall be committed, to or without hard labour, for not ex-



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ceeding one calendar month, or else pay, over and above the amount of the injury done, any sum not exceeding 20s.

Persons convicted a *second* time may be imprisoned, with or without hard labour, for not exceeding six calendar months; and, if the second conviction be before two magistrates, public or private whipping may be added, s. 22.

#### DESTROYING ANY WALL, FENCE, STILE, OR GATE.

Persons maliciously destroying or damaging any fence, wall, stile, or gate, shall, for a *first* offence, pay, over and above the amount of the injury done, any sum not exceeding FIVE POUNDS; for a *second* offence be committed to hard labour for any term not exceeding twelve calendar months; and, if such subsequent conviction take place before two justices, once or twice public or private whipping may be added, s. 23.

#### MALICIOUS INJURIES OF ANY OTHER DESCRIPTION.

The 7 & 8 Geo. IV. c. 30, s. 24, concludes with a general provision, by enacting, that if any person wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property, either of a public or private nature, for which no remedy or punishment is before provided, every such person shall pay such sum of money as shall appear to the justice to be a reasonable compensation for the damage, injury, or spoil so committed, not *exceeding the sum of five pounds*; and, on default of payment, together with costs, the offender may be committed to, or without hard labour, for not exceeding two calendar months. But this provision does not apply where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of; nor to any trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game.

#### SPOILING CLOTHES OR GARMENTS.

The 7 & 8 Geo. IV. has not repealed the 6 Geo. I. c. 23, which enacts, that if any person wilfully and maliciously tear, spoil, cut, burn, or deface the gar-

ments or clothes of any one passing in the public streets or highways, he is guilty of felony, and shall be transported for seven years.

This act was occasioned by the behaviour of certain weavers and others, who, upon the introduction of some Indian fashions, which they supposed would be prejudicial to their own manufactures, made it their practice to deface them, either by open outrage, or by privily cutting or casting aqua-fortis upon them in the streets. To constitute the offence, it is necessary that the assault should be made, 1st, in a public street or highway; 2dly, that it be made wilfully and maliciously; 3dly, that it be with intent to tear, spoil, burn, or deface the clothes of the person against whom it is directed; and, 4thly, that such tearing, spoiling, cutting, burning, or defacing be actually effected, *Leach*, 531.

## CHAP. XVI.

### *Offences against the Game Laws.*

GAME is a term applied to such wild animals as hares, pheasants, and partridges, in the having, taking, and killing of which, certain individuals are protected by penalties and punishments, to the exclusion of the rest of the community.

In treating this subject, it may be conveniently distributed under the following heads:—

- I. *Qualifications to kill Game.*
- II. *The Game Certificate.*
- III. *Acts for the Preservation of Game.*
- IV. *Destroying the Eggs of Game.*
- V. *Destroying Game out of Season.*
- VI. *Poaching in the Night, on Sunday, or Christmas-day.*
- VII. *Seizing Dogs and Guns.*
- VIII. *Having Game in Possession.*
- IX. *Buying and Selling Game.*

#### I. QUALIFICATIONS TO KILL GAME.

The qualifications to kill game, under 22 & 23 Car. II. c. 25, are reducible to the following heads:—

1. The having a freehold or copyhold estate of 100*l.* per annum, free of encumbrance. There being fifty times the property required to enable a man to kill a partridge as to vote for a knight of the shire.

2. A leasehold *for life*, or ninety-nine years, of 150*l.* per annum. An ecclesiastical living is a *life estate*, within the act, and qualifies, if of the clear annual value of 150*l.*

3. Being the son and heir apparent of an *esquire*, or other person of *higher* degree. The eldest son of an esquire, or person of higher degree, is qualified without an estate, whilst the father is living; yet the father is not qualified without the estate required by the statute. Persons of *higher* degree than esquire, are colonels, sergeants, and barristers at law, and doctors in the three learned professions. But it has been determined that a diploma from a Scotch university, appointing a person doctor of physic, does not give a qualification. Neither is a doctor of physic of an English university qualified as such, 1 T. R. 44, 53.

4. The owner or keeper of any forest, chase, or warren.

5. The lord of any manor or royalty.

6. And last, the game-keeper of any lord or lady of a manor, provided he be qualified, or employed solely to kill game for the immediate use and benefit of such lord or lady.

It is important to remark that the qualifications to kill game here specified, with the exception of the three last, even with a game certificate, only exempt from the penalties of the game laws, not from any action to which a person may be otherwise liable from trespassing on another's ground. The king, or persons who hold such royal franchise by grant from the Crown, have alone an exclusive right, without being trespassers, to kill game wherever they may find it.

The 5 Ann, c. 14, which is usually employed in offences against the game laws, subjects any person not qualified to 5*l.* for *keeping or using* any greyhound, setting-dog, or lurcher, or tunnels, or any other engine, to kill and destroy game. And, by 9 Ann, c. 25, if game be found in the shop, house, or possession of any person not

qualified, or being entitled to it under some person so qualified, he shall be deemed guilty of exposing the same to sale, and be subject to 5*l.* penalty for each head of game; on default of payment, the offender may be sent to the house of correction for three months.

On the 5 Ann, the courts have determined, 1. A qualified person may take out with him persons *not* qualified, to *beat the bushes and see a hare killed*, Loft. 178. But assisting a qualified person, without being *invited*, appears not to exempt from the penalties of the statute, 15 *E. R.* 462, *n.* 2. The statute being in the disjunctive, "*keeping or using*," the bare keeping one dog is an offence, 1 *Str.* 462; so the bare keeping a gun is an offence, within the act, provided it be used for killing game. 3. As to the *using*, it has been determined that a walking about with an *intent* to kill game is an using of the instrument, or dog, within the statute; but, 4. An offender is liable to only *one* penalty, though he kill ever so much game on the *same day*, 10 *Mod.* 26. And where several unqualified persons offend by going out and killing a hare, only one penalty can be recovered, 2 *T. R.* 713.

## II. THE GAME CERTIFICATE.

Though a person be qualified to kill game, yet it is necessary he should obtain a certificate from the clerk of the peace of the county or district where he resides, otherwise he will be under 20*l.* penalty. But persons merely assisting qualified persons in their company or presence, and for their use, in the taking or killing of game, need not have a certificate. And it may be proper to remark that the certificate will not authorise a qualified person to kill game out of season.

By 48 Geo. III. c. 55, snipes, quails, landrails, woodcocks, and rabbits are made *game*, and a certificate is necessary to take or kill them in any part of Great Britain; except to take woodcocks and snipes, with nets or springs, or rabbits, by the proprietor, in an enclosed ground, or by the tenant and his servant.

By the 10th section, collectors of taxes, gamekeepers, landlords, tenants, and lessees of grounds, are empowered to demand the certificate of sportsmen, which they may read or take a copy of. In case no certificate

is produced, the person demanding it may require such person to declare his name, residence, and place where he took out his certificate; and, provided he refuse to show his certificate, or give a false certificate, or false name, residence, or place of assessment, such person shall forfeit 20*l*.

By the 7. & 8 Geo. IV. c. 48, persons who have paid the duty on game certificates in Great Britain are exempted from the duty in Ireland; and persons who have taken out a certificate in Ireland may kill game in Great Britain upon paying the additional duty only.

### III. LAWS FOR THE PRESERVATION OF GAME.

*Deer*.—These may be taken or killed by the owner at any time, and it seems they may be so by any person after they have escaped out of the verge of the forest.

By the 7 & 8 Geo. IV. c. 29, s. 26, to course, hunt, snare, carry away, kill, or wound, or attempt to kill or wound any deer kept in the *enclosed part* of any forest, chase, or purlieu, or in any *enclosed land* wherein deer is usually kept, is FELONY, subjecting the offender to transportation for seven years, or imprisonment, with or without whipping, for two years; and if the same offence be committed in the *unenclosed part* of a forest, chase, or purlieu, the offender, on conviction before a justice, shall pay any sum not exceeding 50*l*. and for a second offence be transported, or imprisoned, as last mentioned.

By the same act, *suspected* persons, without lawful occasion, found in possession of deer, or any part thereof, or of any snare or engine for taking deer, shall, on conviction before a magistrate, forfeit any sum not exceeding 20*l*. Setting engines for taking deer, or pulling down any fence or bank, enclosing land where deer are kept, subjects to a like forfeiture. Deer-keepers, or their assistants, may seize the guns or dogs of offenders for the use of their masters, and to beat or wound in resisting such seizure, subjects to transportation for seven, or imprisonment for two years, ss. 27, 28, 29.

*Hares and Conies, or Rabbits*.—Qualified persons may kill and have these animals in their possession any time of the year.

By 7 & 8 Geo. IV. c. 29, s. 30, if any person unlaw-

fully and wilfully, in the night-time, take or kill any hare or coney in any warren or ground lawfully used for the keeping thereof, whether enclosed or not, every such offender shall be guilty of a misdemeanor; and persons guilty of the same offence in the *day-time*, or of using any snare or engine, are subject to a penalty of 5*l.* But this does not extend to the taking, in the day-time, any conies on any sea-bank or river-bank in Lincolnshire, so far as the tide shall extend, or within a furlong of such bank.

This act seems not to repeal that part of the 2 Jac. c. 27, which imposes a penalty of 20*s.* to the poor, on any one, *qualified* or not, coursing, tracing, or ensnaring hares in the snow.

*Swans.*—By the 22 Edw. IV. c. 60, no person, except the king's son, unless a freeholder of five marks a year, shall have any marks or game of swans, on pain of forfeiting the same. It is felony to take any swan that is lawfully marked, or that is domesticated, in a private mote, pond, or river.

*Pheasants and Partridges.*—By 11 Hen. VII. c. 17, no person, of whatever condition, shall, by nets or snares, take any pheasant or partridge in the freehold of another, without the owner's permission; penalty 10*l.* To destroy any pheasant or partridge, with dogs, guns, or other engines, is punishable by a fine of 20*s.* or three months' imprisonment.

*Pigeons.*—By 7 & 8 Geo. IV. c. 29, s. 33, to kill, wound, or take any house-dove or pigeon under circumstances that do not amount to larceny, subjects to a penalty not exceeding 2*l.* over and above the value of the bird. Owners of lands may lawfully kill pigeons destroying the corn, *Cro. Jac.* 492.

*Heath-Fowl, Grouse, and Bustards.*—By 1 Jac. I. c. 27, to destroy any grouse, woodcock, or moor-game, is punishable with a fine of 20*s.* or three months' imprisonment.

*Wild Ducks and Wild Geese.*—The same penalties are annexed to the destruction of any wild duck, wild goose, mallard, teal, or widgeon.

*Hérons.*—By 1 Jac. I. c. 27, to shoot or kill any heron,

with gun or bow, incurs a penalty of 20s. or one month's imprisonment.

An action on the case lies for disturbing a decoy, 11 *East*, 514; but it seems not for frightening away game from a preserve.

#### IV. DESTROYING THE EGGS OF GAME.

By 25 Hen. VIII. c. 11, no person, between the 1st of March and the last day of June, shall take or destroy the eggs of any wild fowl, on pain of imprisonment for one year; and to forfeit, for every egg of any crane or bustard, 20*d.*; for every egg of bittern, heron, or shovelard, 8*d.*; for every egg of mallard, teal, or other wild fowl, 1*d.*

By 1 Jac. c. 27, to take, destroy, or spoil the eggs of any swan, pheasant, or partridge, subjects the offender to a fine of 20s. for each egg, or imprisonment for three months.

#### V. DESTROYING GAME OUT OF SEASON.

By 9 Ann. c. 35, and 10 Geo. II. c. 32, to take or drive away any wild duck, teal, widgeon, or other water-fowl, in the moulting season, between the 1st of June and the 1st of October, is punishable with a fine of 5s. to be levied by distress; in default, be imprisoned, whipped, and kept to hard labour.

By 2 Geo. II. c. 19, and 39 Geo. III. c. 34, no person whatever shall kill or destroy, carry, sell, or buy, any pheasant or partridge, between 1st of February and 1st of October, on pain of forfeiting 5*l.* to the informer, for every such fowl, with full costs of suit. But this does not extend to any pheasant taken in season, and kept in any mew or breeding-place.

By the 13 Geo. III. c. 55, no person may kill, or have in their possession, any heath-fowl, called *black-game*, between 10th December and 20th August; nor any grouse, called *red-game*, between 10th December and 20th August; nor any bustard, between 1st March and 1st September: penalty not exceeding 20*l.* nor less than 10*l.*

By 50 Geo. III. c. 55, in the New Forest, in the

county of Southampton, and the counties of Somerset and Devon, heath-game may be taken between 10th December and 1st September.

VI. POACHING IN THE NIGHT, ON SUNDAY, OR  
CHRISTMAS-DAY.

By 13 Geo. III. c. 80, if any person shall knowingly take or destroy, or use any gun, dog, or snare, with intent to take or destroy any hare, pheasant, partridge, moor-game, or heath-game, between seven o'clock at night and six in the morning, from the 12th October to the 12th February, and between nine o'clock at night and four in the morning, from 12th February to 12th October; or, in the day-time on Sunday or Christmas-day; such person being convicted on the oath of one witness, before one justice, forfeits, for the *first* offence, not exceeding 20*l.* nor less than 10*l.*; for the *second*, not exceeding 30*l.* nor less than 20*l.*; and for the *third*, and every subsequent offence, 50*l.*: in default of payment, be imprisoned not less than six, nor more than twelve months, and be publicly whipped at the end of the imprisonment.

By 57 Geo. III. c. 97, if any person is found with any offensive weapon with intent illegally to destroy game or rabbits, between the hours of six in the evening and seven in the morning, from 1st October to 1st February, and between seven in the evening and five in the morning from 1st February to 1st April, and between nine in the evening and four in the morning for the rest of the year; such person may be transported for seven years, or punished with fine and imprisonment.

By the 2d section, the offender, as last described, may be lawfully seized by the ranger, owner, or occupier of the grounds, or by their keepers, servants, or any other person, and delivered in charge to a peace-officer, to be dealt with according to law: And by 3 Geo. IV. c. 114, hard labour may be added to the punishment.

VII. SEIZING DOGS AND GUNS.

By 5 Ann, c. 14, a justice of peace, or lord or lady of a manor, either by themselves or others, within their manor, may take game from any unqualified person, and all



greyhounds, setting-dogs, lurchers, nets, or engines, to their own use; but they cannot delegate to others the jurisdiction given to them by the act, of judging whether the person in possession of the same is qualified or not, 7 *Taunt.* 760.

Gamekeepers may seize all guns and nets used by an unqualified person; but he cannot seize hounds nor game, 1 *Moore*, 290. And a gamekeeper cannot shoot a dog following game within manor, unless used by an unqualified person for the purpose of killing game; though a regular park-keeper, or warrener, may destroy dogs pursuing *deer* or rabbits.—See before, page 408, as respects deer.

When a gamekeeper is uncertain of the qualification of a person sporting, he should obtain a warrant to seize his gun, in which case, unless acting maliciously, he would not be liable to an action, though the person was qualified, *Comb.* 183.

Except the lord or lady of a manor, justice of peace, or gamekeeper, no other person has a right to seize dogs or guns. The owner of land cannot seize a dog for coursing a hare; nor can any private person legally shoot a dog trespassing on his lands in pursuit of game, 2 *East*, 568; but where game is started and killed by a person on another's land, the latter, if *qualified*, may seize it for his own use, his local property continuing; or a servant of a lord of manor may seize game killed within it by an unqualified person, for the use of the lord.

By a *search-warrant*, a gamekeeper or other person may, in the day-time, search *suspected* houses or other places, for guns, dogs, &c. and retain them or destroy them; and, if any game be found, the offender is to be carried before a magistrate. Under a search-warrant the house can only be entered when open, and the outer door cannot be legally opened, 4 *Chitty's Bl.* 174, n. 25.—See *Gamekeeper* in the DICTIONARY.

#### VIII. HAVING GAME IN POSSESSION.

By 4 & 5 W. & M. c. 23, s. 8, every constable, head-borough, and tithingman, being authorized by one justice of peace, is empowered to search the houses of

SUSPECTED persons not qualified ; and, in case any hare, partridge, pheasant, pigeon, fish, fowl, or other game, (except rabbits, 1 *Raym.* 151,) is found, the offender may be carried before a justice of peace ; and, if he do not give a good account how he came by such game, or shall not, within convenient time, to be named by the justice, produce the party of whom he bought it, or produce a creditable person, to depose upon oath to the sale thereof, he shall forfeit, for every hare, partridge, fish, or other game, any sum not under 5s. nor more than 20s. or be committed to the house of correction, for any time not exceeding one month, nor less than ten days, and there to be whipped and kept to hard labour.

IX. BUYING AND SELLING GAME.

By 5 Ann, c. 15, any higgler, chapman, victualler, or alehouse-keeper, who shall have in his CUSTODY any hare, partridge, pheasant, moor-game, heath-game, or grouse ; or shall buy, sell, or offer to buy or sell any such, he shall forfeit, for every hare, pheasant, &c. 5*l.* half to the informer, and half to the poor of the parish : in default of payment, three months' imprisonment for the *first* offence, and four months for every subsequent offence. But the act does not extend to carriers carrying game for qualified persons.

By the 9 Ann, c. 25, similar penalties are extended to game found in the shop, house, or possession of any poulterer, salesman, fishmonger, cook, or pastry-cook. And any justice of peace, or lord within his manor, may take, for his own use, game found in the possession of any higgler, victualler, or other unqualified person.

By the 28 Geo. II. persons, qualified or not, selling or exposing to sale game are subject to the penalties of the 5 Ann.

Lastly, by the 58 Geo. III. c. 75, if any person, whether qualified or not, shall buy game, he forfeits 5*l.* By the same act, for the better discovery of offenders, the penalties for buying and selling are *remitted to those who have incurred them*, and they receive the full reward of 5*l.* provided they inform, within six months, of any person who has bought or sold game.



**A**

**DICTIONARY**

**OF**

**LAW TERMS, MAXIMS,**

**Acts of Parliament,**

**AND**

**JUDICIAL ANTIQUITIES.**



A  
DICTIONARY  
OF  
LAW TERMS, MAXIMS,  
&c. &c.

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**ABACOT**, the cap of state formerly used by our kings, wrought up in the figure of two crowns.

**ABATE** has various significations in law ; implying to break down, destroy, or remove : so, to abate a castle, fort, or house, is to beat it down ; or, to abate a nuisance, is to put an end to it, or remove it out of the way.

**ABEYANCE** is derived from the French *beyer*, to expect, and signifies that the freehold of land is not vested in any one, but stands, in consideration of law, in expectation of an owner ; for, although there be no person in existence in whom it can vest, yet the law presumes it always potentially existing, and ready to vest when the owner appears.

**ABORTION** is the wilful destruction of the foetus in the womb, by drugs or instruments, or causing of the untimely birth of an infant, by which its death is occasioned. As it is sometimes necessary to produce miscarriage in order to save the life of the mother, it may be presumed the operator, in such cases, only commits *justifiable* homicide and not the crime of abortion. For the punishment of this offence, see page 369.

**ACTS OF PARLIAMENT.** These are of two kinds, *public* or *private*. Acts are deemed *public* and *general*, of which the judges take notice without pleading ; such

are those concerning the king and royal family, prelates, nobles, great officers, sheriffs, &c. Also, acts concerning taxes, commerce and trade in general, or concerning all persons in general, though it be a special or particular thing, as those relating to assizes, woods in forests, chases, &c. *Private* acts are those which concern only a particular species, thing, or person, of which the judges will not take notice without pleading; such as those relating to corporate bodies; to dissenters; to colleges in universities, to particular parishes, enclosures, &c. *Public* and *private* acts are also distinguished as to FEES. All bills whatever, from which private persons and corporations derive exclusive benefit, are subject to the payment of fees, and such bills are, in this respect, denominated *private bills*. In parliamentary language, another distinction is used, and some acts are called *public general acts*, others *public local acts*—namely, church acts, canal acts, &c.—See *Bill*.

The 7 & 8 Geo. IV. c. 28, s. 14, in order to remedy the confusion sometimes arising from the vague terms of acts of parliament, gives a general rule for interpreting all criminal statutes; by enacting that, “wherever any statute relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence, or the subject matter on or with respect to which it shall be committed, or the offender or the party affected or intended to be affected by the offence, hath used, or shall use words importing the singular number or the masculine gender only, yet the statute shall be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and, wherever any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where such body shall be the party aggrieved.”

It was not till the year 1796 the statutes or acts of parliament were generally accessible to the public; prior to that time, only about 1100 copies were printed,

which were confined to members of both houses, the privy council, and certain great officers of state ; but, in consequence of representations to parliament, 5500 copies of every public general statute, and 300 of every public local and personal statute, are now distributed throughout the United Kingdom, to the houses of parliament, public offices, public libraries, courts of justice, magistrates, and clerks of the peace.

**ACTION** is a term applied to any suit at law, whereby a person seeks redress either for a civil or criminal injury.

*Action on the case* is a general action, where a party seeks compensation in damages for an injury done without violence, and for which the law has not provided a specific remedy. Actions of this nature lie in a great variety of cases : as against a common carrier, who loses the goods entrusted to him to carry ; against an innkeeper who refuses to entertain a guest ; or against a surgeon, who neglects, or unskilfully treats his patient. It also lies for deceit in contracts, bargains, and sales : as if a man sell by false weights or measures, or sell wine or other commodities, knowing them to be corrupt, unwholesome, or unmarketable.

*Action upon a statute* is where an aggrieved party sues under a statute, and seeks redress either by the express words of the statute or by implication. If a statute give a remedy for a matter actionable at the common law, the party may sue at the common law as well as upon the statute. But if a man bring his action at the common law, he waives his remedy by the statute.

Action *qui tam*, sometimes called a *popular action*, is such as is given by acts of parliament, which create a forfeiture, and impose a penalty for the neglect of some duty, or the commission of some offence, to be recovered by him who prosecutes. An informer, on a penal statute, is not generally entitled to his costs, unless they be expressly given to him by the statute. By the 18 Eliz. & 27 Eliz. c. 10, if any informer delay his suit, discontinue, become nonsuit, or have the trial passed against him, he shall pay the defendant his costs.



**ACCOUNTANT-GENERAL**, an officer created by 12 Geo. I. c. 32, in the Court of Chancery, to receive and account for all moneys belonging to the suitors of the Court, in the place of the masters, which moneys are to be paid into the Bank, with the privity of such accountant-general, and laid out in the 3 per Cent. Consols, in trust for the parties, and to be taken out by order of the Court. No fees are to be taken by this officer or his clerks, on pain of being punished for extortion; but they are to be paid salaries.

**A DONATIO CAUSA MORTIS** is a death-bed gift of a personal chattel, given by a person in contemplation of dissolution, under the implied condition, the property shall revert to the donor in case he recover. In bequests of this kind there must be an *actual delivery* of the thing intended to be given; nothing will pass of which absolute possession cannot be given, at the time, by the donor: thus, stock-receipts will not give the stock, for want of a transfer; nor will bills of exchange, or promissory notes, payable *to order*, unless endorsed over to the party, pass; but bank-notes and other securities payable to *bearer* will pass.

**AD QUOD DAMNUM** is a writ which ought to be issued before the king grants certain franchises, as turning an ancient highway, establishing a fair, or market, which may be prejudicial to others: it is directed to the sheriff to inquire what damage the grant may do. The river Thames is a highway, and cannot be diverted without an *ad quod damnum*, and to do such a thing ought to be by grant of the king.

**ADVOCATE** is the same in the civil and ecclesiastical law as counsellor, in the common law; and who assists his client with advice, and pleads for him.

**ADVOWSON** is the right of presentation to an ecclesiastical living or benefice: he who possesses this right is stiled the *patron*.—See *Simony*, page 328.

**AERIE** or *airy*, from the French *aere*; a hawk's nest.

**AFFIDAVIT** is an oath, in writing, sworn before an officer of a court, or other person duly authorized to administer such oath, to affirm the truth of the facts therein contained. The true place of abode and addi-

tion of every person making an affidavit are to be inserted therein. See OATH.

AGISTMENT is where cattle are taken into pasture, at a certain rate per week; it is so called, because the cattle are suffered *agiser*, that is, to be levant and couchant. There is also agistment of sea-banks, where lands are charged with a tribute to keep out the sea.

AGNUS DEI, a piece of white wax in a flat oval form, like a small cake, stamped with the figure of a lamb, and consecrated by the Pope. By 13 Eliz. to import any *agnus dei*, beads, crosses, or other superstitious things, pretended to be hallowed by the Church of Rome, is a *præmunire*. But this part of the statute, as well as the 3 Jac. c. 5, against the import of popish books, is repealed by 3 Geo. IV. c. 41.

ALEHOUSES. The last general act for regulating the licensing of alehouses, and preventing disorders therein, is the 3 Geo. IV. c. 77; by which any person to whom a license is granted is required to enter into recognizance in the sum of 30*l.* with one surety in the sum of 20*l.* or two sureties in the sum of 10*l.* each, that he will not sell adulterated liquors, nor in measures under the full size; nor knowingly suffer any gaming with cards, draughts, dice, bagatelle, or other sedentary game, by journeymen, labourers, servants, or apprentices; nor any bull, bear, or badger baiting, or cock fighting, or such like amusements; nor suffer men or women of notoriously bad fame or dissolute girls and boys to assemble in his house or premises; nor suffer any drinking during the usual hours of divine service on Sundays; nor, lastly, keep open his house during late hours of the night, or early in the morning, except for the reception of travellers. No police-officer, constable, &c. can be surety for an alehouse keeper.

Persons applying for licenses must produce a certificate of good conduct, signed by the parson, vicar, or curate; or of the major part of the churchwardens or overseers of the poor, and four respectable householders; or of eight inhabitant householders of the place where the applicants inhabited for the last six months. Forgiving or counterfeiting such certificate is a misdemeanor.

Annual meetings of justices for granting licenses to sell ale or beer, or other excisable liquors, by retail, are to be held in September. But, by 4 Geo. IV. c. 125, justices in Middlesex may appoint the general annual meeting for granting licenses to be held in March. Licenses are not to be granted to persons whose houses have not been previously licensed, unless notice of application, containing particulars, be given to a clerk of the peace. Persons holding licensed houses cannot be constables, &c. nor liable to serve as such, on penalty of 10*l.* for serving either as principal or deputy constable.

Ale and beer must be sold in a full ale quart, pint, or half pint, made of pewter, sized to the standard and stamped; penalty not more than 40*s.* By 7 & 8 Geo. IV. c. 48, the present Licensing Act is continued till 1828, and the end of the next session of parliament, when it is probable the licensing system will undergo revision.

ALDERMAN literally imports no more than *elder*, and was one of the three degrees among the Saxons: *Ætheling* was the first, and *thane* the lowest, but alderman was equivalent to our earl; the word was disused in the latter ages of the Saxons, and earl introduced in its place. At this day aldermen are those who are associates to the chief civil magistrate of a city or town corporate. They ought to be resident in the place where they are chosen, for the better discharge of their magisterial duties; and if they remove they may be disfranchised.

ALFET (Saxon *alfæth*), a cauldron of boiling water, into which a criminal was to dip his arm up to the elbow, and there hold it for some time.

ALIEN is one born without the dominion or allegiance of the Crown of England.

By 7 Ann, amended by 13 Geo. III. c. 21, all persons born out of the allegiance of the Crown of Great Britain, whose fathers are entitled to the rights of natural-born subjects, are entitled to the privileges of Englishmen. But the children born abroad of a *mother*, a natural-born subject, are not entitled to the privileges of natural-born subjects. For a child born out of the allegiance of the

Crown, to be a natural-born subject, the father at the time of birth must be not a subject only, but a subject by *birth*. Therefore, children born in the United States of America, since the recognition of their independence, of parents born there before, and continuing to reside there afterwards, are aliens, and cannot inherit land here, 2 *B. & C.* 779.

Aliens are subject to several disabilities, and are denied, in several instances, the benefit of our laws; they cannot purchase lands, except for the king's use; they are incapable of taking by descent; they cannot take benefices without the king's license; they cannot enjoy a place of trust, nor take a grant of lands from the Crown; they cannot maintain an action for real property; they are even incapable of taking a lease of land, though they may take a lease of a house for residence, for the purpose of trade.

The goods of aliens were formerly subject to additional duties above those payable by natural born subjects; but these were taken off by the 24 Geo. III. with the exception of the duties of package and skewage, or any duties granted by charter to the City of London.

The right of aliens, indicted of felony or misdemeanor, to be tried by a jury of one half foreigners, is continued by the New Jury Act, 6 Geo. IV. c. 50, s. 47. An alien juror cannot be challenged for want of a freehold qualification, but he may for any other cause, in like manner as a native juror.

Until the session of 1825, the *residence* of aliens was subject to strict surveillance, and they might be compelled to leave the kingdom, on proclamation, under pain of heavy penalties for neglect; these provisions, however, expired on the 23d of Nov. 1826; and the only condition of residence required of aliens, by 7 Geo. IV. c. 54, is a registry of their names, abode, and occupation, which must be renewed *half-yearly*. Aliens having resided in the country for seven years, without having been *once* out of the kingdom during that period, are exempt even from these regulations.

ALIMENT, in law, includes food, clothes, and habitation, 2 *Inst.* 17.

**ALIMONY** is an allowance for maintenance, to which a married woman, during separation, is entitled from her husband, except in cases of elopement or adultery.

**ALLODIAL** is used in contradistinction to *feudal*, and is where an inheritance is held without any acknowledgment to any lord or superior. So *allodial* lands are free lands, enjoyed without paying any fine, rent, or service.

**AMICUS CURIÆ.** If a judge is doubtful or mistaken in matter of law, a stander-by may inform the Court as *amicus curiæ*, or friend of the Court. *Coke*.

**ANATOMY.** It has been determined that stealing dead bodies, though for the improvement of the science of anatomy, is indictable as a misdemeanor; it being considered a practice contrary to common decency and repugnant to the general feelings of mankind, 2 *Leach*, 560.

**ANCESTOR**; the law makes a distinction between *ancestor* and *predecessor*: the one being applied to an individual and his ancestors, the other to a corporation and its predecessors.

**ANCIENTS**, a grade in the inns of Court. In Gray's Inn, the society consists of benchers, *ancients*, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, such as have gone through or are past their readings, are termed ancients; the inns of Chancery consist of ancients and students, or clerks; and from the ancients one is yearly chosen the principal, or treasurer. *Cowel*.

**ANNO DOMINI**, the computation of time from the birth of Jesus Christ, which is generally inserted in the dates of all public writings, with an addition of the year of the king's reign.

**ANNULUM ET BACULUM.** The ancient mode of granting investiture of spiritual jurisdiction to the bishops was *per annulum et baculum*; by the prince delivering to the prelate a ring, pastoral staff, and crosier.

**ANNUM LUCTUS**, the year of mourning, during which the civil law ordained a widow should remain unmarried, and the same rule prevailed among the Romans in the time of Augustus. It was intended to prevent the inconvenience which might arise from a widow marrying

and having a child so soon after the death of the first husband that it might be uncertain which husband was the father.

**APPEAL**, from the French *appeller*, is to call upon, summon, or challenge one, and is a kind of private suit, by which an individual seeks to make good an accusation, or revenge an injury he has sustained. Appeals might formerly be had in treason, murder, larceny, and mayhem. But the whole law on the subject is now mere matter of curiosity; for the public attention having been drawn to this relic of Gothic jurisprudence, by the appeal of *Ashford against Thornton*, 1 B. & A. 405, for the murder of his sister, the 59 Geo. III. c. 40, was passed, which abolishes all appeals of treason, murder, felony, or other offences.

**APPEARANCE TO ACTION** is the defendant's filing common or special bail, when he is served with a copy of, or arrested on any process out of the courts of Westminster. In the King's Bench the defendant has eight days to file common bail, or to enter a common appearance in the Common Pleas, exclusive of the return day: and if the last of the eight days be Sunday, he has all the next day.

**APPROPRIATION** is where the tithes, glebe, or other ecclesiastical dues, instead of being in the hands of the parson, are appropriated to the use of a bishopric, prebend, college, or other spiritual corporation. Prior to the dissolution of religious houses, in the reign of Henry the Eighth, the appropriations belonging to such houses amounted to more than one-third of all the parishes in England. These, by the rules of the common law, would have been disappropriated had not a clause been inserted in the statutes of dissolution to give them to the king in as ample a manner as the religious houses held the same at the time of their dissolution. From this source sprung the *lay* appropriations, or secular parsonages, we now see in the kingdom, they having, from time to time, been granted out by the crown; and whence, according to Spelman, they are now called *impropriations*, as being improperly in the hands of laymen.

The distinction, therefore, between *appropriation* and *impropriation*, though the terms are sometimes confounded, is this: when a benefice is in the hands of a bishop, college, or religious house, it is an *appropriation*; when in the hands of a layman, an *impropriation*.

**APPREHENSION OF FELONS.** By various statutes of Will. III. Queen Ann, and Geo. II. rewards are granted to such persons as apprehend and prosecute to conviction highwaymen, burglars, coiners, receivers of stolen goods, and others felons and offenders; but, by the 58 Geo. III. c. 70, these statutes are repealed and other provisions substituted in lieu of them. Certificates which have been granted to exempt persons from parish and ward offices, in consequence of having prosecuted to conviction certain felons, are no longer transferrable from the individuals to whom they were first granted. But the act does not take away from the executor or administrator of any person, killed by any robber, endeavouring to apprehend him, any reward to which he was before entitled; nor does it deprive any person of the horse, furniture, money, or goods of any robber. Neither does it abrogate the claim for reward of the executor of any watchman or other person, who shall be killed in endeavouring to apprehend burglars or housebreakers. The act also allows the expenses of prosecution in felony, which provision is extended, by 7 Geo. IV. c. 64, to prosecutions for misdemeanors.— See page 323.

**APPROVEMENT**, an old term for *improvement*; as where the lord encloses or discommons part of the waste, he is said to *approve*.

**ARGENTUM DEI**, or God's penny; money given in earnest, upon the making of any bargain. A God's penny is still common in the North of England in bargains for cattle and other commodities.

**ARMIGER**, or esquire, for the terms are related, is a title of dignity, belonging to such gentlemen as bear arms.

**ARREST** is the corporal seizing and taking of the *person*, the chief points in which have been explained at p. 33; but it may be useful to add a few observations

on arrest in civil process, from Mr. Chitty. 1. On the cause of action; 2. On the affidavit; 3. On persons privileged from arrest.

1. As to the first, it is a rule where a debt is certain, or damages may be reduced to a certainty; as in *assumpsit*, or covenant for the payment of money, the defendant may be arrested as a matter of course, on an affidavit, stating the cause of action, *Tidd*, 170. But when damages are altogether uncertain; as in *assumpsit* or covenant to indemnify, or in action for trespass, there can be no arrest without a special order of the court or a judge, on a full affidavit of the circumstances; and a person cannot be held to special bail in *trover* or *detinue* without an order.

A person cannot be arrested on a *penal* statute, but he may on a *remedial* one; or where the act expressly authorizes an arrest. Neither can an arrest be made on a bail bond, or replevin bond, or a recognizance of bail; nor for goods bargained or sold without stating a delivery; nor on a policy of insurance, without an adjustment or express promise to pay the amount, but he may on a guarantee, 9 *Price*, 135. A defendant cannot be arrested for *more* than is equitably due. Thus, he cannot be arrested on the penalty of a bond, but he may if the same is agreed to be for liquidated damages.

2. *On the Affidavit*.—The affidavit of debt should be made by the plaintiff, or any person for him who is legally a competent witness, and should be positive and explicit as to the existence and motive of the cause of action. The place of abode and addition of the deponent should be stated. An affidavit made abroad and verified here is sufficient, *Tidd*, 180; but it is doubtful whether it can be made by foreigners before a British consul abroad; and if made abroad, stating the debt to be so much *sterling* money, without showing that it was *British* sterling, it is bad. It is at present unnecessary to negative a tender of the debt in bank notes, the several acts requiring it having expired.

3. *Persons privileged from Arrest*.—Peers of the realm and Irish and Scotch peers, whether representative peers or not; members of parliament and corporations are



privileged from arrest. Also barristers, clerks, attorneys, suitors, witnesses, and all others attending courts of justice. Clergymen during divine service, and in going and returning therefrom. Administrator or executor, as such, but not if he has personally promised to pay. Ambassadors and their servants. Aliens for debt beyond seas. Bail being about to justify, or otherwise attending court as bail. Bankrupts for forty-two days, unless before in prison, and after forty-two if the time for surrender be enlarged: also, if summoned before the commissioners relative to his estate, though several years after his last examination. Insolvent debtors discharged, unless on a subsequent express promise. Feme-covert; but if she obtain credit pretending to be single, she may be arrested; though if plaintiff knew her to be married she will be discharged. Creditors attending commissioners of bankrupt to prove a debt; also witnesses attending the Insolvent Court, or courts-martial. Sergeants at law, bishops, consul-general, marshal of the King's Bench, and the warden of the Fleet, are privileged. And lastly, by 7 & 8 Geo. IV. c. 71, after August 1st, 1827, no person can be arrested upon any process issuing out of any court where the cause of action has not ORIGINALLY amounted to the sum of *twenty pounds* over and above and exclusive of any costs or expenses that may have been incurred in suing for the same.

By the 8th section of this act, no sheriff, under-sheriff, or other officer, having the execution of process, shall grant any warrant, or arrest the person of any defendant upon any writ or process, *issued by any plaintiff in his own person*, unless the same shall have been delivered by some attorney or his clerk, or an agent authorized by such attorney, *in writing*, and unless the writ be endorsed by such attorney, or his clerk, or agent, *in the presence* of such sheriff or officer having the execution of process, with the *name and abode* of such attorney. But nothing in the act extends to any writ or process sued out by any attorney or other officer of any court having authority to sue out process in his own name.

ASSAY, *of weights and measures*, is the examination of weights and measures by clerks of the market, or other

persons appointed for that purpose. The assaying of *plate* made by goldsmiths is the ascertaining the proportion of alloy and pure gold or silver therein, and is a duty discharged by the Goldsmiths' Company, London, who, by various charters and statutes, are constituted assay-masters of all England. All gold and silver plate must be conformable to the standard fineness certified by the stamp of the Company's arms, and a variable mark to denote the year in which it was made, with the initials of the maker's name; to imitate this is felony, and to sell without it a misdemeanor, incurring the forfeiture of the article sold. But this does not extend to jewellers' work, or such highly-chased articles of gold that the Company's marks could not be affixed without injuring the workmanship.

ASSESSED TAXES include various domestic taxes, assessed or levied on windows, houses, menial servants, carriages, pleasure horses, and other articles of private use and luxury. The last regulations of these taxes are by the 6 Geo. IV. c. 7, and the 7 Geo. IV. c. 22.

#### WINDOW DUTIES.

Houses having not more than seven windows are entirely exempt from the duty on windows. Other houses are chargeable yearly with the following duties:—

Windows.	£	s.	d.	Windows.	£	s.	d.
8.....	0	16	6	24.....	7	5	9
9.....	1	1	0	25.....	7	14	3
10.....	1	8	0	26.....	8	2	9
11.....	1	16	3	27.....	8	11	0
12.....	2	4	9	28.....	8	19	6
13.....	2	13	3	29.....	9	8	0
14.....	3	1	9	30.....	9	16	3
15.....	3	10	0	31.....	10	4	9
16.....	3	18	6	32.....	10	13	3
17.....	4	7	0	33.....	11	1	6
18.....	4	15	3	34.....	11	10	0
19.....	5	3	9	35.....	11	18	3
20.....	5	12	3	36.....	12	6	9
21.....	6	0	6	37.....	12	15	3
22.....	6	9	0	38.....	13	3	6
23.....	6	17	6	39.....	13	12	0

Windows.	£	s.	d.	Windows.	£	s.	d.
40 to 41.....	14	8	9	100 to 109.....	29	8	6
45 .. 49.....	15	16	9	110..119.....	31	13	3
50 .. 54.....	17	5	0	120..129.....	33	18	3
55 .. 59.....	18	13	0	130..139.....	36	3	0
60 .. 64.....	19	17	9	140..149.....	38	8	0
65 .. 69.....	21	0	3	150..159.....	40	12	9
70 .. 74.....	22	2	6	160..169.....	42	17	9
75 .. 79.....	23	5	0	170..179.....	45	2	6
80 .. 84.....	24	7	6	180 .....	46	11	3
85 .. 89.....	25	10	0	And for every win-			
90 .. 94.....	26	12	3	dow above 180.	0	1	6
95 .. 99.....	27	14	9				

*Rules for charging Windows.*

1. The duties are charged for one year, from April 5, and are paid by the occupier.

2. Where any dwelling-house is let in different apartments, and shall be inhabited by two or more persons, the same shall be charged as if such house were inhabited by one only; and the landlord or owner shall be deemed to be the occupier, and charged.

3. All sky-lights and windows, or lights, however constructed, in staircases, garrets, cellars, passages, and all other parts of dwelling-houses, in the exterior parts of the house, are to be charged.

4. Interior windows, receiving light from any exterior window which is regularly charged to the duty, are exempt by 6 Geo. IV. c. 7.

5. All windows exceeding 12 feet high, or 4 feet 9 inches broad, including the whole opening of the wall in which the window is fixed, is charged as two windows, unless built prior to April 5, 1785; excepting also the windows of shops, workshops, or warehouses, and those belonging to places of public entertainment, licensed to sell wine or other liquors by retail, and excepting farm-houses, exempted by provisions respecting inhabited houses.

6. When a partition or a division between two or more windows fixed in one frame, is 12 inches broad, each side shall be charged as a distinct window.

7. Whether the kitchen, cellar, scullery, buttery, pan-

try, larder, wash-house, laundry, bake-house, brew-house, or lodging room, be within the dwelling, contiguous to, or disjoined from the same, it is equally liable as part of the house.

*Exemptions.*

Houses belonging to his Majesty, or any of the royal family ; public offices ; hospitals, charity-schools, and poor-houses, except such apartments as are occupied by the officers and servants, which are to be assessed as separate dwelling-houses: the windows in any room licensed for divine worship, and used for no other purpose.

One glass window in a dairy or cheese-room is exempt.

By 53 Geo. III. c. 104, windows in any room used wholly for the purpose of carrying on any manufacture.

By 57 Geo. III. c. 25, tenements which have been formerly occupied as dwelling-houses shall not be charged to the duties on houses and windows, when used for the purposes of trade only, or as warehouses, shops, or counting-houses.

By 4 Geo. IV. c. 21, windows, not exceeding three, in shops and warehouses, in the front, and on the ground floor, of dwelling-houses, when used for exposing goods to sale.

By 5 Geo. IV. c. 45, the exemptions are extended to offices or counting-houses used for the purpose of exercising any profession, vocation, business, or calling, but not to chambers in any of the inns of court, or of chancery, nor to any college or hall, in either of the Universities of Oxford or Cambridge.

Mills, places of manufacture, or warehouses, not attached to a dwelling-house, are not liable, though a servant be appointed to watch and guard them in the night-time ; provided such servant be named in a license, to be obtained from the commissioners of the district.

The duties do not extend to windows stopped up with the *same materials* as the outside to which they appertain, whether in the wall or roof ; but any person stopping up a window, or making one, without giving six days' notice, in writing, to the surveyor, is liable to the penalty of 10*l.* And no abatement will be made for windows not stopped up before the 5th day of April preceding the assessment.

Unfurnished houses, not tenanted, but merely left in charge of persons to take care of them, are exempt.

Farm-houses occupied by labourers are exempt.

#### HOUSE DUTY.

Houses under 11*l.* rent by the year are exempt from the duty on inhabited houses.

For every inhabited house, worth (with the offices, &c.) the sum of 11*l.* and under 20*l.* rent by the year, the yearly sum of ..... 1*s.* 6*d.* in the pound.

Twenty pounds, and under 40*l.* .. 2*s.* 3*d.* in the pound.

Forty pounds, or upwards .... 2*s.* 10*d.* in the pound.

#### MALE SERVANTS IN OR OUT OF LIVERY.

	£	s.	d.		£	s.	d.
For 1 Servant..	1	4	0	For 7 Servants..	18	7	6
2 do.....	3	2	0	8 do. ....	22	8	0
3 do.....	5	14	0	9 do. ....	27	9	0
4 do.....	8	14	0	10 do. ....	33	5	0
5 do.....	12	5	0	11 do. ....	42	1	6
6 do.....	15	9	0				

And an additional 3*l.* 16*s.* 6*d.* for every other servant.

Servants employed by any *bachelor*, an additional sum of ..... 1 0 0

For every clerk, book-keeper, or office-keeper, overseer or clerk to ditto (except apprentices with whom no fee, or less than 20*l.* has been paid) ..... 1 0 0

Where more than one is employed, for each.... 1 10 0

For every shopman, warehouseman, or porter, whether in a wholesale or retail shop or warehouse ..... 1 0 0

For every traveller, or rider, employed by any merchant or trader..... 1 10 0

And where more than one is employed, each .. 2 10 0

But traders who employ persons to travel *on foot*, are exempt by 59 Geo. III. c. 11, for every male person so employed above the number of *four*.

For every person employed as steward, bailiff, overseer, or manager, or *clerk* under a steward, bailiff, overseer, or manager ..... 1 0 0

	£	s.	d.
Every waiter (except occasional waiters) ....	1	10	0
For every coachman, groom, postilion, or helper, kept to be let to hire, for any period exceeding twenty-eight days, and less than one year, each	1	5	0
Stage coachmen and guards.....	1	5	0
Every person employed by any stable-keeper to take care of a race-horse.....	1	0	0
Every person employed in any of the above capa- cities, and not being a servant to his employer, where such employer shall be chargeable to the higher duties on servants and carriages, or for more than one horse .....	1	4	0
And where not so chargeable .....	0	10	0
<i>Exemptions.</i> —Apprentices not exceeding two, or any apprentice bound for the term of seven years. Boys under fifteen years of age, kept by publicans for carry- ing out beer, and occasional waiters are also exempt.			

## CARRIAGES WITH TWO WHEELS,

When kept for a person's use, or let out to hire, and drawn by one horse .....	3	5	0
Drawn by two or more horses.....	4	10	0
For every additional body, used on the same carriage .....	1	11	0

## CARRIAGES WITH FOUR WHEELS.

	£	s.	d.		£	s.	d.
For 1 Carriage..	6	0	0	For 6 Carriages..	49	4	0
2 do. ....	13	0	0	7 do. ....	59	10	0
3 do. ....	21	0	0	8 do. ....	70	8	0
4 do. ....	30	0	0	9 do. ....	81	13	6
5 do. ....	39	7	6				

And an additional 9*l.* 6*s.* 6*d.* for every other carriage.

Carriages with three or four wheels, of less diameter than 30 inches, drawn by ponies, mules, oxen, or asses, are not chargeable with duty.

By 4 Geo. IV. c. 11, the duty on *taxed carts* is repealed.

## GAME.

Certificate for taking or killing any game what-

ever, or woodcock, snipe, quail, landrail, or  
 cony..... 3 13 6  
 Game-keeper ..... 1 5 0

By 7 & 8 Geo. IV. c. 49, those who have taken out a game certificate in Great Britain are exempt from the duty on certificates in Ireland.

PLEASURE HORSES, FOR CARRIAGES OR RIDING.

	£	s.	d.		£	s.	d.
For 1 such horse	1	8	9	For 11 horses ..	34	18	6
2 .....	4	14	6	12 .....	38	2	0
3 .....	7	16	9	13 .....	41	8	9
4 .....	11	0	0	14 .....	44	12	6
5 .....	13	18	9	15 .....	47	16	3
6 .....	17	8	0	16 .....	51	0	0
7 .....	20	18	3	17 .....	54	8	0
8 .....	23	18	0	18 .....	58	1	0
9 .....	27	6	9	19 .....	61	15	0
10 .....	31	15	0	20 .....	66	0	0

And an additional 3*l.* 6*s.* for every other horse.

Race-horses ..... 1 8 0

Horses or mules for labour, 13 hands high .... 0 10 6

Waggoners' and carriers' horses..... 0 10 6

Butcher, for one horse used wholly in his trade 1 8 9

For a second horse ..... 0 10 6

Horses, not exceeding 13 hands high, used for  
 drawing any carriage or for riding..... 1 1 0

Mares, while kept for breeding, are exempt; also,  
 mules employed in carrying ore and coals.

Tenants coming into occupation at Midsummer are to  
 be discharged from a moiety of the annual assessment.

HUSBANDRY HORSES.

By 1 & 2 Geo. IV. c. 110, horses "used *wholly* in husbandry" are exempted from the duties on horses.

And, by 3 Geo. IV. c. 50, the exemption is extended to farmers on estates under 200*l.* per annum, and making a livelihood solely thereby, for one horse used occasionally for *riding*; and also to the letting of their husbandry horses for hire or profit, for any other purpose than of drawing any carriage chargeable with duty in respect of such horses or carriages, or of letting the same to hire.

# LAW TERMS.

435

## TAX ON DOGS.

£ s. d.

For every greyhound ..... 1 0 0

For every hound, pointer, setting dog, spaniel,  
lurcher, or terrier..... 0 14 0

Those who keep two or more dogs, of whatever  
denomination, for each dog ..... 0 14 0

Persons not paying king's taxes, may keep  
one dog, if not a greyhound, hound, pointer,  
setting-dog, spaniel, lurcher, or terrier.

Whelps under six months old are exempt.

Composition for hounds, per annum ..... 36 0 0

Occupiers of farms under 100*l.* per annum, are exempt  
from the duty on dogs *bonâ fide* kept for the care of  
sheep.

## HORSE DEALERS.

Within London and Westminster, or the liberties  
thereof, St. Mary-le-bone, and St. Pancras,  
the Weekly Bills of Mortality, or borough of

Southwark, annually.....£25 0 0

In any other part of Great Britain ..... 12 10 0

Dealers must deliver lists of horses kept for riding or  
drawing

## HAIR-POWDER.

Wearing hair-powder, each person, annually £1 3 6

But payment for two unmarried daughters will exempt  
the rest.

## ARMORIAL BEARINGS.

£ s. d.

Every person chargeable for any carriage .... 2 8 0

Without a carriage, but paying house duties.. 1 4 0

Every other person ..... 0 12 0

## COMPOSITION FOR ASSESSED TAXES.

By 59 Geo. III. c. 51, and subsequent acts, persons  
liable to assessed taxes are allowed to compound with  
the commissioners for three years for the annual pay-  
ment thereof, at the same rate, annually, as shall have  
been assessed the year preceding such composition, to-  
gether with an additional annual rate of 1*s.* for every  
20*s.* of the amount of their assessment. Compositions  
entitle the persons compounding to open additional win-  
dows, and to keep additional articles free of duty of  
the same description as those before charged, and will



exempt them from the regulations of Assessed Tax Acts; except when chargeable for another dwelling-house, or for articles of a different description, or renewed. They cannot be entered into by persons in *trade*, in respect of any article kept for the purpose of trade; nor can any composition be entered into with two or more persons in partnership in trade; nor upon any carriages and horses, or other articles let or used to hire. By 7 Geo. IV. c. 22, the period of compounding for the window duties and on inhabited houses is extended to two years, commencing the 5th of April, 1828; and other assessed taxes three years from the 5th of April, 1827.

*Appeals* against the Assessed Taxes must be preferred on the day appointed by the commissioners, and cannot be made after the expiration of the year within and for which the tax is to be collected, *T. Reports*, 433.—For other taxes, see *Stamp Duties* and *Excise*.

ASSETS, from the French *assez*, “enough,” are, strictly, effects in the hands of an executor or assignee sufficient to meet demands on the estate of the testator or bankrupt. But the term is more generally applied to all property realized and available to the demands of claimants.

ASSIZE is derived, by Sir Edw. Coke, from the Latin *assideo*, “to sit together.” Assizes are held twice a year in every county in England, except Middlesex, before two judges appointed by the king’s special commission. These judges sit in virtue of five several commissions—namely, commission of the peace, of oyer and terminer, of gaol delivery, of assize, and nisi prius. Assize also signifies any statute or ordinance for regulating the weight, measure, or quality of the thing it concerns: as the assize of bread or ale.—See *Courts of Assize*, p. 27.

ATTACHMENT differs from arrest in this, that arrest is only upon the *person*, whereas an attachment is often upon the goods. *Attachments* are sometimes issued, at the discretion of the judges of a court of record, against a person for *contempt*, for which he is committed without appeal, indictment, or information: for, though Magna Charta says, none shall be imprisoned without the judgment of his peers, or the law of the land, yet this summary proceeding is considered necessary for the due

administration of justice, and is certainly now confirmed as part of the law of the land.

AVERAGE is a term in insurance which has three significations. 1st. It means a partial loss of any thing insured; as if the ship or goods are partially lost or injured, and the insurer is bound proportionally to compensate the insured. 2d. If the master of a ship in distress throws overboard insured goods, with a view to preserve the whole ship and cargo, that is a total loss to the owners of these goods; but that loss so sustained for the general welfare is brought into a general average, and all who are concerned in the ship, freight, or cargo, must bear a proportional part of it: which average loss so borne by them, their insurers, if they have any, must make good to them. 3d. Average is applied to a small payment, which merchants who ship goods make to the master for his personal care and attention to the goods so entrusted to him.

## B

BACHELOR appears to be derived from *bas* and *chevalier*, an inferior knight, and thence barbarously latinized into *baccalaureus*. It seems, on all authorities, a title of disparagement. Thus, while bachelor is applied to single men, another feudal term, of higher denomination, namely *baron*, is, in legal language, applied to those who are married. In 13 Rich. I. bachelor signifies the same with knight-bachelor, which is the most ancient, though the lowest, order of knighthood. Also, in the universities, the lowest graduates are styled bachelors of arts, which is the first degree taken by students before they come to greater honours. Under the Assessed Taxes, bachelors, who keep *male* servants, are, without much regard to the new doctrines on population, assessed an extra pound, in consideration of single blessedness.

BADGER, a term used in the North of England for one who buys corn or victuals in one place and carries them to another, to sell and make profit by them.

BAILIFF is of doubtful etymology, and applies to officers very different in rank and jurisdiction. Thus, the

**sheriff** is bailiff to the crown in the county of which he has the care, and in which he executes the king's writs. The sheriff's officers are termed bailiffs. There are likewise bailiffs to whom the king's castles are committed, as the bailiff of Dover-Castle. Lastly, the chief magistrates in divers ancient corporations, as Ipswich, Yarmouth, Colchester, and other places, are termed bailiffs.

**BAILIWICK** is not only the whole county, but any liberty thereof, exempt from the jurisdiction of the sheriff, and over which the lord of the liberty appoints his bailiff, with such powers within his precinct as an under sheriff exercises under the sheriff of the county. Such is the bailiff of Westminster, appointed by the Dean and Chapter of Westminster.

**BAILMENT** is a delivery of goods in trust, upon a contract, expressed or implied, that the trust shall be faithfully executed on the part of the baillee, and the goods re-delivered as soon as the time, or use for which they were bailed, shall have expired. So, if cloth be delivered, or as it is legally expressed, be *bailed* to a tailor, to make a suit of clothes, he has it upon an implied contract to render it again when made, and that in a *workmanly* manner. If a person deliver any thing to another to keep for him, the receiver is bound to return it on demand: but, in this case, the baillee is not liable to make good any loss, unless it happen by gross neglect, which is construed to be evidence of fraud. If, however, the baillee undertake especially to keep the goods *safely* and *securely*, he is bound to answer all loss and damage that may befall them, for want of the same care with which a prudent man would keep his own.

**BAKERS.** See *Bread*.

**BANNERET**, a knight made in the *open field*, by cutting off the point of his standard. He ranks next to a baron in dignity, and has precedence of all baronets. But, to entitle him to this honour, he must have been created by the king in person, in the open field, under the royal banner, in time of war, else he ranks after baronets.

**BANNS**, [from the *Brit. ban*, that is clamour,] is a proclamation or public notice: any public notice or sum-

mons whereby a thing is commanded or forbidden. For the publication of banns in matrimony, see *Marriage*.

**BARON** has divers significations in England. 1st. It is taken for a degree of nobility, next to that of a viscount. 2d. There are barons by office; as barons of the exchequer, or of the cinque-ports. 3d. And last, it is the feudal term for husband; *baron* and *feme*, in our law, are husband and wife.

**BARRATRY**, in marine insurance, is any deviation from the direct object of the voyage, prejudicial to the interest of the owners. So any act of the master or seamen, which is of a criminal nature, as engaging in smuggling, or in making captures, is barratry.

**BARTON**, a word used in Devonshire for the demesne lands of a manor; sometimes the manor-house itself; and, in some places, for outhouses and fold-yards.

**BEER**. In order to encourage the consumption of beer, an act passed in 1823, the 4 Geo. IV. c. 51, to allow the brewing and sale of beer of an *intermediate* strength, between strong beer and table-beer, and subject to proportionate excise duty. Under this act, beer brewed of the proportion of not less than five barrels, containing thirty-six gallons ale measure each, nor more than five and a half of such barrels, from one quarter of malt, shall be liable to a duty of 5s. per barrel. Such beer, if sold in any quantity of nine gallons, or one quarter of a barrel, not to be charged to the consumer at more than at the rate of 27s. per barrel, and so in proportion for any greater or less quantity than a barrel; and, if sold in quantities *less* than nine gallons, not to be charged more than at the rate of 10d. per gallon, and so in proportion for any quantity greater or less than a gallon. Persons entering to brew such intermediate beer, having any other beer of greater or less strength, to be charged with a duty of 10s. per barrel; and using any other ingredients in the brewing of such intermediate beer than water, malt, hops, and yeast, subjects the beer to be forfeited, and a penalty of 200l. Selling the beer at a higher rate than 10d. per gallon, and so in proportion for a greater or less quantity, subjects to a penalty of 50l. When malt or hops rise in price, the

Treasury may authorise an advance of the price of such beer. Persons taking out licenses to brew intermediate beer to be subject to the same regulations as brewers of strong beer. The beer may be retailed on the premises, but not consumed there, nor in any yard, orchard, or outhouse adjoining. Penalty 100*l*.

**BENEFICE** is any ecclesiastical living, given for life, but not for years, or at will.

**BENEFIT OF CLERGY.** Few terms are of more frequent occurrence in law-books, and concerning the precise meaning of which the general reader is less correctly informed, than the *privilegium clericale*, or in common speech, the *benefit of clergy*. We will endeavour briefly to explain the subject by inquiring into, 1. The origin of the benefit of clergy. 2. What offences were clergyable.

1. *The origin of the Benefit of Clergy.* The benefit of clergy originated in the great power and influence of the priesthood, during a period of ignorance and superstition, when both the people and their rulers were disposed to treat with peculiar favour and honour the ministers of religion; and, in consequence of which, they obtained two extraordinary and exclusive privileges: 1. Places consecrated to religious solemnities were exempt from criminal arrests, which was the foundation of sanctuaries; 2. The persons of clergymen were exempt, in certain cases, from criminal process before the secular judge, and made amenable only to ecclesiastical censure and jurisdiction. The *first* of these immunities was much abridged by 29 Hen. VIII. and finally abolished by 21 Jac. I. c. 22. The *second*, after undergoing various mutations, descended to our own time, and was only finally abolished, as an *exclusive* privilege, by the 6 Geo. IV. c. 25.

Originally, the benefit of clergy was confined to spiritual persons, actually admitted into holy orders, and wearing the clerical tonsure; but, in process of time, the privilege was extended to every one who could read. When education became more diffused, by the discovery of printing, and other concurrent causes, reading was deemed an incompetent proof of clerkship, or being in

holy orders; readers, therefore, were excluded from the *full* benefit of clergy, though not liable to the same severity of punishment, in case of delinquency, as non-readers, the totally illiterate.

Afterwards, it was properly considered that education and learning were no extenuation of guilt, but quite the reverse; and that if the punishment of death for simple felony was too severe for those who had been liberally instructed, it was much more so for the totally unlearned. Accordingly, by the 5 Ann, c. 6, it was enacted that privilege of clergy should be granted to all who were entitled to it, without requiring them to read by way of conditional qualification.

2. *What offences were Clergyable.*—The benefit of clergy was only admitted in petty treason and capital felonies; clergymen had never any privilege in high treason, petty larceny, and misdemeanor; they always were, as they now are, liable to be capitally punished, whipped, or transported for these offences: lying in wait for one on the highway, or ravaging a county, or burning houses, were never clergyable offences. A vast number of felonies have been deprived of clergy by acts of parliament, the object of which was to restore the law to the same rigour of capital punishment in the *first* offence that it exerted before the *privilegium clericale* was introduced. At present, no one can claim the benefit of clergy; it is entirely abolished by an act of last session, the 7 & 8 Geo. IV. c. 28, and every one guilty of felony, whether peer or commoner, layman or spiritual person, is made amenable to the same criminal judicature.

It follows, the phrase “benefit of clergy” has ceased to have any meaning in English law-books, and it is only now retained to discriminate a certain class of offences to which a specific punishment is annexed. By the 7th section of the act last mentioned, no person shall suffer death for any felony unless such felony was previously excluded from the benefit of clergy, or made so punishable by a subsequent statute. Hence all offences *without* the benefit of clergy are capital and punishable

with death ; all offences *within* the benefit of clergy are punishable only by transportation, imprisonment, or some other infliction less than taking away life.

BENEVOLENCE is used in the ancient chronicles and statutes for any voluntary gratuity given by the people to the king.

BERWICK. By 20 Geo. II. c. 42, it is enacted that Berwick-upon-Tweed and Wales shall be included in all acts of parliament, wherein the kingdom of England, or that part of Great Britain called England, is mentioned.

BILL IN PARLIAMENT is a rough draft or skeleton of an act of parliament, drawn out on paper, with blanks, or void spaces, in which are inserted dates, penalties, and alterations agreed upon in its progress through parliament. Formerly, all bills were drawn in the form of *petitions*, which were entered upon the parliament rolls, with the king's answer subjoined, not in any settled form of words, but as circumstances required ; and, at the end of each parliament, the judges drew them into the form of statutes, which were entered on the statute-rolls. This imperfect mode of legislation left the laws very much at the mercy of the Crown ; and, accordingly, it was discovered that the laws were sometimes altered, and that others were added, of which the commons knew nothing till they were promulgated by the sheriffs at the county courts to instruct and warn the people. But, in the reign of Henry V. to prevent mistakes and abuses, the statutes were drawn up by the judges before the end of the parliament ; and, in the reign of Henry VI. bills in the form of acts, according to the modern custom, were first introduced. When a bill receives the *royal assent* it becomes a statute or act of parliament. It was not till the reign of Richard III. the statutes were drawn up in the English language ; prior to that time, they were either in Latin or French, generally the latter. For the mode of carrying a bill through its different stages, see p. 19.

BILL OF LADING is a memorandum, signed by masters of ships, acknowledging the receipt of the merchant's goods.

BILL OF MIDDLESEX, a mode of process in the Court

of King's Bench, without original writ: it is so called because the Court now sits in Middlesex; for if it sat in Kent, it would then be a *bill of Kent*.

**BILLS OF MORTALITY** are abstracts from parish registers, showing, as their name imports, the number that have died in any parish or place during certain periods of time, as in each week, month, or year, and are, accordingly, denominated weekly, monthly, or yearly bills. They also include the number of baptisms during the same period, and generally those of marriages.

**BLACK-MAIL**, an ancient composition in money, or provisions, paid by the inhabitants of the Northern counties, to protect them from the ravages of the border robbers, called moss-troopers.

**BLACK-ROD**, *the gentlemen usher of*, has his name from the black rod, on the top whereof sits a lion in gold, which he carries in his hand. He has the keeping of the chapter-house-door, when a chapter of the order of the garter is sitting; and, in the time of parliament, he attends on the House of Peers. His habit is like to that of the register of the order, and garter king at arms; but this he wears only at the time of the festival of St. George, and on the holding of chapters.

**BLACKS OF WALTHAM**, a set of desperate deer-stealers, for the suppression of whom the *Black Act*, the 9 Geo. I. c. 22, was especially intended. This statute is repealed by the 7 & 8 Geo. IV. c. 27.

**BOILING TO DEATH**, the punishment awarded by the 22 Hen. VIII. c. 9, for persons convicted of killing by *poisoning*. This extraordinary punishment seems to have been adopted from the peculiar circumstance of the crime which gave rise to it. The preamble to the statute states that one John Roose, a cook, had been lately convicted of throwing poison into a large pot of broth, prepared for the Bishop of Rochester's family and the poor of the parish; and the said John Roose was, by a retrospective clause of the same statute, ordered to be boiled to death. This horrible sentence was carried into effect in Smithfield, where, eleven years after, a young woman, named Mary Davis, suffered in the same manner for a similar crime.



**BOLTING**, a fictitious arguing of cases in the inns of court, for the purpose of training the students to legal dialectics. It is inferior to **MOOTING**, and may be derived from the Saxon *bolt*, a house, because done privately in the house for instruction. It is now disused, and given way to the more substantial practice of *eating a way* to the bar by keeping commons—which, however, are not always kept. Shakspeare alludes to *bolting*—

“ ——— He is ill school’d

In *boulted* language : meal and bran together  
He throws without distinction.”

**BONA FIDE**, any thing done with good faith, without fraud or deceit.

**BOND** is a deed or obligatory instrument, in writing, under seal, by which a person binds himself to do a specified act.—See *Deed*, page 254.

**BOROUGH**, from the Saxon *borhoe*, signifies a corporate town which is not a city, and also such a town as sends burgesses to parliament. According to Brady, parliamentary boroughs are either by charter, or towns holden of the king in ancient demesne.

**BOUND-BAILIFF**, a sheriff’s officer for executing process. As the sheriffs are answerable for their misdemeanors, the bailiffs are usually bound in a bond for the due execution of their office, and thence called *bound-bailiffs*, which has been corrupted into a much more homely appellation.

**BRANDING**, or burning on the hand or face, was a punishment inflicted for various offences. It is now abolished, and, by 19 & 39 Geo. III. whipping or imprisonment substituted.

**BREAD**. The 1 & 2 George IV. c. 50, which regulates the making of bread in places beyond the Metropolis, provides that the materials of bread, made for sale, are to consist of flour or meal of wheat, barley, rye, oats, buck wheat, Indian corn, pease, beans, rice, and every other kind of grain ; and of potatoes, common salt, pure water, eggs, milk, yeast, barm, leven, and potatoe yeast, mixed in such proportions as the makers and sellers may deem fit. No loaves of bread called *assize loaves* are to be made where any loaves of bread called

*priced bread* is made at the same time, so that a person may not be injured by buying assized loaves in lieu of priced loaves, and the contrary; penalty not exceeding 40s. nor less than 10s.

*Adulteration of Bread.*—Bakers, either master or journeyman, using alum or any other unwholesome ingredient, and convicted on their own confession, or on the oath of one or more witnesses, to forfeit not exceeding 20l. nor less than 5l. On default of payment, they may be committed to the house of correction. Justices may also cause the names of such offenders to be published in the newspaper of the district. The adulteration of meal or flour is punishable with a like penalty. Loaves made of the meal of any other grain than wheat, to be marked with a large roman M. Penalty not less than 10s. nor more than 40s. for every loaf not so marked.

*Searching Houses.*—Magistrates, or peace-officers, and officers of parishes, by warrant, are empowered to search the houses and premises of millers, mealmen, and bakers, for any ingredient or mixture which may be used for adulterating meal or bread, and may seize adulterated meal or bread; which being so adjudged may be disposed of as the magistrates think proper. Penalty on finding ingredients for adulteration on the premises not less than 5l. nor more than 20l. The names of the offenders may be published in a local newspaper.

*Keeping of Weights.*—Bakers and sellers of bread to keep weights in their shops for the weighing of bread, and customers may require the same to be weighed in their presence. Penalty, for refusal, not less than 20s. nor more than 5l.

*Observance of Sunday.*—Bakers not to sell or expose to sale any bread, rolls, or cakes, on *Sunday*; or bake or deliver any meat, pudding, pie, tart, victuals, at any time after half-past one o'clock in the afternoon; and no meat, pudding, pie, &c. shall be brought or taken from any bakehouse, during divine service, nor within one quarter of an hour of the commencement thereof. Persons offending against these regulations, to forfeit, for the *first* offence, 5s. for the *second*, 10s. and for the *third*, and every subsequent offence, 20s.

No miller, baker, or corn-dealer, is to act as justice in the execution of this act. Penalty, 50*l*.

*Bread in the Metropolis*—The several acts for regulating the making of bread within the city of London, and ten miles of the Royal Exchange, are consolidated by the 3 Geo. IV. c. 106, the general provisions of which are similar to those of the 1 & 2 Geo. IV. for regulating the making of bread in the country.

The penalties in London for baking or delivering on Sunday are, for the *first* offence, 10*s*. the *second*, 20*s*. and the *third*, 40*s*. The penalty on a miller, mealman, or baker, acting as justice in the execution of the act, is 100*l*. And, for the space of two years, from the commencement of the act, bakers are not to sell any loaf under the denomination of the peck, half-peck, quarter of a peck, or half quarter of a peck loaf. Penalty not less than 40*s*. nor more than 10*l*.

BREHON. In Ireland, the judges and lawyers were anciently styled *brehons*, and the Irish law, called the brehon law. It is mentioned by Spenser, in his State of Ireland.

BRIDGE-MASTERS, of *London Bridge*, are officers chosen by the citizens, who have certain fees and profits belonging to their office, and the care of the bridge and bridge-house estate.

BRIEF, a summary of the client's case, made out for the instruction of counsel, wherein the case of the party ought to be *briefly*, but is often very lengthily, stated.

BROKERS are a sort of middle-men who negotiate bargains and contracts between merchants and traders. Formerly, none were admitted to this employment but such as had been unfortunate in business. By 8 & 9 W. III. c. 20, brokers are to be licensed in London by the lord mayor, who administers an oath, and takes bond for the faithful execution of their office. If any person shall act as broker, without being licensed and admitted, he forfeits the sum of 500*l*. and persons employing him 50*l*. Brokers are to register contracts, &c. under the like penalty; also, brokers shall not deal for themselves, on pain of forfeiting 200*l*. They are to carry about them a silver medal, having the king's arms,

and the arms of the city, and pay 40s. a year to the chamber of the city. By 10 Ann, c. 19, brokers taking above 2s. 6d. per cent. for brokage of stock, shall forfeit 20*l.* with costs. By 57 Geo. III. c. 60, brokers acting without being duly admitted are made liable to a penalty of 100*l.* payable to the chamber of London. And, by the same act, in consequence of the diminution of the profits of the officer of guager of the city of London, they are to pay 3*l.* additional to 40s. formerly payable on admission, and an addition of 3*l.* on the 29th of September every year, to the 2*l.* formerly payable under the 6 Ann.

**BULL AND BOAR.** By the custom of some places the parson of the parish may be obliged to keep a bull and a boar for the use of the parishioners, in consideration of his having the tithe of calves and pigs.

**BULLION**, gold or silver in ingots or bulk before it is coined.

**BURSAR**, the person who receives and pays money in collegiate and conventual bodies.

**BUTTONS.** By 36 Geo. III. c. 60, persons putting false marks on gilt or plated buttons, forfeit the same, and 5*l.* for not exceeding twelve dozen, and at the rate of 1*l.* for every further twelve dozen. To put other words than "*gilt*" or "*plated*" on metal buttons incurs forfeiture, with a penalty of 5*l.* for any quantity exceeding one dozen. But the words *double* and *treble gilt* may be marked on metal buttons if they are so in fact. The penalties go one half to the poor, the other half to the informer. The act does not extend to buttons made of mixed metal, or Bath, or white metal buttons, inlaid with steel or set in shells.

**BY-LAW** is a private law made by those duly authorised by charter, custom, or prescription, for the conservation of order and good government in some place, corporation, or jurisdiction. A by-law by a corporation may inflict a penalty, recoverable by distress or action of debt. But it cannot be made with a penalty of imprisonment, or forfeiture of goods and chattels. All by-laws are to be reasonable; and ought to be for the common benefit, and not the private advantage of

any particular persons, and must be consonant to the public laws and statutes, as subordinate to them. By 19 Hen. VII. c. 7, laws made by corporations are to be approved by the lord chancellor, or chief justices, on pain of 40*l*.

## C

**CALENDAR MONTHS.** The twelve months of the year, consisting of thirty or thirty-one days each, except February, which has twenty-eight, and, in leap-year, twenty-nine days.—See *Year*.

**CALLING THE PLAINTIFF** is the ceremony which takes place when the plaintiff is *nonsuited*. It is usual for a plaintiff when he or his counsel perceive that he has not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or withdraw himself, upon which the crier is ordered to *Call the plaintiff*; and if neither he nor any one for him appear, he is nonsuited, the jurors are discharged, and the action is at an end, and the defendant shall recover costs. A nonsuit, however, is not like a verdict, a bar to another action, when the plaintiff can get better proof.

**CAMPUS MAIL**, formerly an assembly of the people every year upon May-day, when they confederated to defend the country against foreigners and all enemies.

**CANDLE, sale by inch of.** In this case a small piece of wax-candle, about an inch long, is burning, and the last bidder when the candle goes out is the buyer of the goods exposed to sale.

**CANDLEMAS-DAY**, the anniversary feast of the purification of the Virgin Mary, on the 2d of February. It is a *dies non* in the courts, no judge sitting on that day.

**CANON LAW** is a body of Roman ecclesiastical law, relative to matters over which that church assumed to have jurisdiction. It is compiled from the opinions of the fathers, the decrees of general councils, and the decretal epistles and bulls of the Holy See. At the period of the Reformation, it was enacted, by 25 Hen. VIII. confirmed by 1 Eliz. c. 1, that a *review* should be had of the canon law, and till such review the canon law already in being, and not repugnant to the law of the land,

or the royal prerogatives, should continue in force; as no such review has yet been made, on these statutes depends the authority of the canon law in England. With respect to the canons enacted by the clergy, under Jac. I. in the year 1603, they clearly do not bind the *laity*, never having been confirmed by parliament, though the clergy are bound by the canons, confirmed by the king only.

**CAPIAS**, the prenomens to several kinds of writ, issued either before or after judgment.

**CAPITE**, *tenants in*, a common mode of tenure under the feudal domination, whereby a man held lands of the king, either by knight's service or in socage. It is abolished by 12 Car. II. c. 24, and all tenures in *capite* turned into free and common socage.

**CARACT** is the twenty-fourth part of an ounce, or any other quantity of metal. The fineness of gold is usually estimated in caracts: thus, if twenty-two caracts of pure gold and two of alloy be mixed together, it is said to be twenty-two caracts fine.

**CASTLE**. In the time of Hen. II. there were in England 1115 castles, and every castle had a manor annexed; during the civil wars, these castles were demolished, so that generally there remains only the ruins of them at this day.

**CASUS OMISSUS**, implying that something is omitted, or not provided against.

**CATCHPOLE**, an opprobrious term for a sheriff's officer.

**CATHEDRAL**, the church of the bishop, where the service is performed with greater ceremony.

**CAVEAT**, a process entered in the spiritual courts to restrain the institution of a clerk to a benefice, or a probate of a will, &c.

**CERTIORARI** is an original writ issuing out of Chancery, the Court of King's Bench, or other courts at Westminster, directed, in the king's name, to the judges or officers of inferior courts, commanding them to return the record of a cause or matter depending before them, to the end the party may have the more sure and speedy justice before him, or such other justices as he shall assign to determine the cause. In vacation time a cer-

*tiorari* to remove an indictment from the quarter-sessions, may be granted by any of the judges of the King's Bench, but security is to be given, before it is allowed, to plead to the indictment in the superior court.

**CESTUI QUE VIE** is he for whose use any estate or interest is granted.

**CHAMBERLAIN**, *lord*, an officer of the royal household, who has control of the king's chamber, the wardrobe, the chaplains, physicians, comedians, &c. The *Chamberlain of London* is commonly the receiver of the city rents, payable into the chamber, and has great authority in determining the rights of freemen, apprentices, and orphans.

**CHAMPION OF THE KING.** An ancient officer, whose office it is at the coronation, when the king is at dinner, to ride, armed *cap-à-pié*, into Westminster-hall, and by the proclamation of a herald make a challenge, that if any man should deny the king's title to the crown, he is there ready to defend it in single combat; this done, the king drinks to him, and sends him a gilt cup, with a cover, full of wine, which the champion drinks, and has the cup for his fee. The championship, since the coronation of Richard II. when Baldwin Freville exhibited his petition for it, was adjudged from him to Sir John Dymocke, his competitor (both claiming from Marmion,) and has continued ever since in the family of the Dymockes, who hold the manor of Scrivelsby, in Lincolnshire, hereditary from the Marmions, by grand serjeantry, that the lord thereof shall be the king's champion. Accordingly, a Dymocke performed the office at the coronation of Geo. III. and of his present Majesty.

**CHANCE-MEDLEY.** Where death is caused unintentionally, and not through negligence, or wantonness, it is called chance-medley.

**CHANCERY.** It is the opinion of Camden and Cowell, that the Court of Chancery derived its name from bars laid one over another crosswise, like lattice, with which it was environed to keep off the press of people, and not hinder the view of the officers who sat therein; such grates, or

cross-bars, being called *cancelli*. Dr. Johnson seems, also, inclined to this derivation; and, indeed, it appears the most reasonable, for we have, also, the word "chancel," which signifies that part of the church formerly *barred* off from the body of it. Sir T. Moore, in the quaint style of the times, gives, in two lines, a description of the matters which may be relieved in equity:

"Three things are to be helpt in conscience,  
Fraud, accident, and things of confidence."

For the constitution of the Court, see page 25.

CHAPLAIN, a spiritual person, retained by the king, a nobleman, or some official personage, to perform divine service in his household. The king, queen, and royal family may retain as many chaplains as they please; but, with respect to other persons, they are limited by statute. Chaplains so retained enjoy peculiar privileges, as to non-residence, and holding a plurality of livings; but no chaplain is entitled to these privileges unless he be retained by letters testimonial under hand and seal.

CHARITABLE CORPORATION, a plausible society, under this designation, was incorporated by parliament in the early part of the reign of Geo. II. The ostensible object of this society was to lend money to the *industrious poor*, at 5*l.* per cent. interest, on pawns and pledges, to prevent their falling into the hands of pawnbrokers and other rapacious individuals. In addition, however, to the 5*l.* per cent. interest, these benevolent persons took 5*l.* per cent. more for charge of officers, committees, warehouses, &c. After trafficking in this spurious humanity for the space of three years, the charitable corporation contrived to make a *break*, defrauding the shareholders of great sums.—See 5 Geo. II. c. 31, 32. 7 Geo. II. c. 11.

CHARTA, the ancient word for a deed or a statute.

CHARTER, a royal grant or privilege.

CHARTER-PARTY, a deed, or pair of indentures, containing the covenants and agreements between merchants and masters of vessels. A charter-party of freight usually binds the master to deliver the cargo in good condition at the place of discharge, according to agree-



ment; and the master sometimes pledges ship, tackle, and furniture, for performance.

CHASE, a domain, or franchise, privileged for the hunting of beasts of game, as deer, fox, hare, &c. It is of a middle nature between a *forest* and a *park*; it differs from the former in that it may be held by a subject; and from the latter that it is not enclosed. A man may have a chase over another's ground, and the owner of the soil cannot destroy the covert for game.

CHILDWIT, a fine or penalty on a bond-woman, begotten with child without consent of the lord. The term is not yet obsolete in some parts of Essex.

CHIMNEY SWEEPERS are regulated by the 28 Geo. III. c. 48. Church-wardens and overseers may apprentice any boy eight years of age or more, till the age of sixteen, who is chargeable to the parish, or who begs, or with the consent of the parent. No master shall keep more than six apprentices at one time, and every master is to affix a brass plate, with his name and abode, on the front of a leathern cap, for the boy to wear when upon duty. Penalty 10*l.* or not less than 5*l.* Masters ill-treating apprentices subject to the same penalty. Masters are not to let apprentices to hire, nor cause them to call the streets before seven, nor after twelve, between Michaelmas and Lady-Day; nor before five and twelve, between Lady-Day and Michaelmas, on like penalty.

CHRISM, a confection of oil and balsam, consecrated by the bishop, used in popish ceremonies and at coronations.

CHURCH is a building consecrated to the service of God and religion, and anciently dedicated to some saint whose name it assumed; and, if it has the administration of the sacraments and of rites of burial, it is in law adjudged a church. The term is also applied to a body of persons, united by the profession of the same Christian faith.

*Church of England* is that church recognised and endowed by the state, and comprising, in its doctrine and discipline, the national faith. The laws and constitutions which govern the Church of England are, 1. Divers immemorial customs. 2. Our own provincial con-

stitutions, and the canons made in convocations, especially those in the year 1603. 3. Statutes or acts of parliament concerning the affairs of religion, or causes of ecclesiastical cognizance; particularly the rubricks in our Common Prayer Book, founded upon the Statute of Uniformity. 4. And last, the Articles of Religion drawn up in the year 1562, and established by 13 Eliz. c. 12.

*Church-Building Acts.* By 58 Geo. III. c. 45, commissioners are empowered to grant money for the building of churches in parishes or extra-parochial places in which there is a population of not less than 4000 persons, and in which there is not accommodation in the churches and chapels of the establishment already erected for more than one-fourth part of that number, or where there are 1000 persons situated more than four miles distant from such places of worship; and, also, to make advances in places where the inhabitants are able to bear part of the expense of such erections, and to repay such advances by instalments. The interest of these loans and a sinking-fund, to the amount of one-twentieth part of the principal, to be charged on the church-rate. But the 59 Geo. III. c. 134, requires that no application to build or enlarge any church or chapel, either wholly or in part, shall be made by means of rates upon the parish in any case in which ONE-THIRD part or more in value, such third part to be ascertained by the average rate for the relief of the poor for the three preceding years, shall dissent therefrom. A rate, however, not exceeding 1s. in the pound in any *one year*, or 5s. *in the whole*, upon the annual value of the property in the parish, may be raised for building or enlarging a church or chapel by two-thirds of the persons exercising the powers of vestry in the parish, and of which vestry-meeting notice has been given upon two successive Sundays preceding, and this, notwithstanding the dissent of one-third of the rate-payers.

The provisions of these acts have been extended and amended by 3 Geo. IV. c. 72; 5 Geo. IV. c. 103; and, lastly, by 7 & 8 Geo. IV. c. 72, the powers of the commissioners are continued for ten years from July 10, 1828.

**CHURL**, in the Saxon times, was a tenant-at-will, but of free condition.

**CINQUE PORTS** are Dover, Sandwich, Romney, Winchelsea, and Rye, and to these may be added Hythe and Hastings. They are under the government of a lord-warden, who is usually the *premier*, and enjoy various privileges as to pilotage, the issuing of writs, and other judicial matters.

**CITY**. This term was introduced about the period of the Conquest, and not limited, as Blackstone conjectured, to episcopal towns. It appears to be derived from *civitas*, and applied to *all* towns of eminence, signifying that they were places subject to civil government and municipal regulation. Long after the Conquest, city is used synonymously with burgh; as appears in the charter of Leicester, it is called both *civitas* and *burgus*, which shows the commentator is mistaken in confining the term to a town which "either is or hath been the see of a bishop." But, on this point, Mr. Wooddeson, the Vinerian professor, has adduced a decisive authority. It is that of Ingulphus, who relates that at the great council assembled in 1072, to settle the claims of two archbishops, it was decreed that bishops' sees should be transferred from *towns to cities*.

**CIVIL LAW** is the municipal law of the Romans, comprised in the code, the pandects, or digests, the institutes, and the novels, or authorities. It is allowed, under certain restrictions, to be used in the ecclesiastical, military, and admiralty courts, and in the courts of the two universities.

**CIVIL LIST**. His present Majesty having, upon his accession, placed his interest in the hereditary revenues of the Crown, at the disposal of the House of Commons, they are, by the 1 Geo. IV. c. 1, carried to the consolidated fund for his life; and, by the same statute, a revenue of 850,000*l.* in England, and 207,000*l.* in Ireland, is granted to His Majesty for his life. The same act provides that, whenever the charges on the civil list, in any one year, shall exceed the sum of 1,070,000*l.* an account of the cause and particulars thereof shall be laid before

Parliament. The charges on the civil list are, by a schedule to this act, thus divided and apportioned:—

1st Class.	His Majesty's privy purse .....	£60,000
2d do.	Allowances to the lord chancellor, judges, and speaker of the House of Commons.....	32,955
3d do.	Salaries to His Majesty's ambas- sadors, and other ministers; sa- laries to consuls, and pensions to retired ambassadors' and mi- nisters .....	226,950
4th do.	Expenses (except salaries) of His Majesty's household, in the de- partments of the lord steward, lord chamberlain, master of the horse, master of the rolls, and surveyor-general of the works..	209,000
5th do.	Salaries in the above departments .	140,700
6th do.	Pensions limited by the act 22 Geo. III. c. 82.....	95,000
7th do.	Salaries to certain officers of state, and other allowances.....	41,300
8th do.	Salaries to the commissioners of the Treasury, and chancellor of the Exchequer .....	13,822
9th do.	Occasional payments, not comprised in any of the foregoing classes..	26,000
		<hr/> £845,727 <hr/>

CLERK is, strictly, a person in holy orders, but it is now generally applied to any person whose chief occupation is writing in a court of law — or elsewhere. Officers in courts of law were, formerly, often clergymen; and hence to this day their successors are denominated clerks. Kings were anciently called clerks, *Dav. 4*. In *Mass v. Heavyside*, a clerk in a mercantile house described in the notice of justification by the addition of "gentleman," was rejected as bail, *7 Dow. & Ry. 772*. H. T. 1826.

CLOCKS AND WATCHES. By the 9 & 10 W. III. c. 28,

no case or dial-plate for clock or watch shall be exported without the movement ; nor made up without engraving the maker's name, on pain of forfeiture, and 20*l.* penalty. Workmen embezzling or making away with the materials, or persons buying or receiving them *in pawn*, are subject to a penalty of 20*l.* or fourteen days' imprisonment.

COATS OF ARMS were first introduced about the reign of Richard I. who brought them from the crusade in the Holy Land, where they were first invented, and painted on the shields of the knights to distinguish the variety of persons of every Christian nation who resorted there, and who could not, when clad in complete steel, be otherwise identified.

COCKET, a seal belonging to the custom-house, or rather a scroll of parchment, sealed, and delivered by the officers of the customs to merchants, as a warrant that their merchandise is customed.

COGNOVIT ACTIONEM is where a defendant confesses the cause of action to be just ; upon which judgment may be entered up, and execution levied according to the terms therein agreed upon by the parties.

COIF, a slip of lawn, which sergeants-at-law wear on their heads when created.

COIN is so called from having been originally square, with *corners*, and not round as it now is.

COLLATION OF A BENEFICE is the presentation to a benefice, by the bishop, when he has the right of patronage.

COLLEGE, a corporation, company, or society, having certain privileges by license of the king ; such as the colleges at Oxford and Cambridge.

COLLEGIATE CHURCH consists of a dean or other head and secular priests, as canons, or prebendaries ; such are Westminster, Windsor, and Southwell.

COMMENDAM When a beneficed clergyman is promoted to a bishopric, he vacates his benefice by the promotion ; but if the king, by special dispensation, gives him power to retain his benefice, he is said to hold it *in commendam*. This is sometimes done where the see is small, for the better support of the episcopal dignity.

**CONJUGAL RIGHTS**, a *suit for restitution of*, is where either the husband or wife, without legal cause, live separate from the other, in which case the ecclesiastical courts will compel them to come together, if either party, as Blackstone remarks, be weak enough to desire it, contrary to the other's inclination.

**CONSULS**, officers appointed by the king to reside abroad, to watch over the interests of our merchants.

**CONTINGENT LEGACY**. If a legacy be left to any one when he attain, or if he attain the age of twenty-one years it is contingent; and if he die before that time it is lapsed. *Contingent Remainder* is when an estate in remainder is limited to take effect, either to an uncertain person or upon an uncertain event, so that the intermediate estate may chance to be determined, and the remainder never take effect. *Contingent Use* is a use limited in a conveyance of land, which may or may not happen to vest, according to the contingency expressed in the limitation of such use.

**CONVENTICLE**, a private assembly, or meeting, for the exercise of religion.

**CONVENTION PARLIAMENT**, the lords and commons convened on the abdication of James II. and who settled the Prince of Orange on the throne.

**CONVICTS**. The punishment of the hulks and transportation are chiefly regulated by 5 Geo. IV. c. 84. In the year 1812, a report was made to the House of Commons, in which many useful measures of reform and regulation were suggested and afterwards adopted. By this act, each hulk is placed under an overseer, who is to reside in it, with a sufficient number of officers and guards; he is invested with the same power as a gaoler over his prisoners; like him, he is answerable for their escape, may inflict moderate punishment for disorderly conduct, is to see them fed and clothed, and is to keep them to labour according to his instructions. Over the whole is placed a superintendant, (with an assistant, or deputy, if necessary,) who is to inspect them all minutely four times a year, at the least, ascertain their condition, examine the behaviour of both overseers and prisoners, the amount of the earnings, and the expenses of

the establishment ; upon all which he is to report to the Secretary of State.

With respect to transportation, the convict may now be punished by the surgeon of the ship, with the assent, in writing, of the master ; and the punishment, with the nature of the offence, must be entered the same day in the ship's log-book. Upon his landing, the governor acquires a property in the service of the convict, and may assign him over to any other person ; such assignee thereby acquiring the same property and power of re-assignment. By 30 Geo. III. c. 47, His Majesty is empowered to authorize the governor or lieutenant-governor of any place to which convicts are transported, to remit, either absolutely or conditionally, the whole or any part of their term of transportation.

CONVOCATION, or representative assembly of the ecclesiastical body, is a sort of miniature parliament, in which the archbishop presides, with regal state ; the upper-house of bishops represents the lords, and the lower, composed of the delegates of the inferior clergy, represents the commons, with its knights of the shire and burgesses. It is convened, prorogued, and dissolved by the king ; but its mimic assemblies are now only *pro formâ*, the affairs of the church being generally managed by the imperial parliament.

CORN LAWS. The fall in the prices of agricultural produce in the years 1813-14, and the probable reduction in the rents of the landholders, in consequence of the abandonment of inferior soils, which the artificial high prices, resulting from the state of the currency, had brought into cultivation, gave rise to several laws for the regulation of the foreign trade in corn, and the protection of the agricultural interest. By one act all restrictions on the exportation of corn are repealed, and, by another act, the 55 Geo. III. c. 26, the importation of corn, when it fell below a certain price, is prohibited ; this last act is abrogated by a subsequent law, the 3 Geo. IV. c. 60, which now regulates the foreign trade in corn, allowing the import of wheat, and other description of grain, according to a scale of duties, varying with the average price per quarter of corn in the home-market.

*Duties on the Import of Corn.*

When imported from any Foreign Country.	Wheat.		Rye, Pease, and Beans.		Barley, Bere, and Bigge.		Oats.	
	s.	d.	s.	d.	s.	d.	s.	d.
If under, per quar- ter .....	80	0	53	0	40	0	28	0
High duty .....	12	0	8	0	6	0	4	0
Additional for first three months ..	5	0	3	6	2	6	2	0
If at or above, per quarter .....	80	0	53	0	40	0	28	0
But under do.....	85	0	55	0	42	6	30	0
First low duty....	5	0	3	6	2	6	2	0
Additional for first three months ..	5	0	3	6	2	6	2	0
If at or above, per quarter .....	85	0	55	0	42	6	30	0
Second low duty..	1	0	0	8	0	6	0	4

A temporary act passed last session, the 7 & 8 Geo. IV. c. 57, which permits, till May 1st, 1828, corn, grain, meal, or flour, imported from any foreign country, which had either been warehoused, or reported in order to be warehoused, on or before July 1, 1827; and, also, the same articles imported from any British possessions in North America, or elsewhere out of Europe, before May 1, 1828, to be entered, for home-consumption, at certain rates of duty different from the above. Under this law, when the average price is 62s. the duty is to be 28s. per quarter, and to vary as the price is above or below that sum. In importations from the colonies, a duty of only 5s. on wheat is imposed till the price in the home-market is 67s. per quarter; and when the price is above that sum, only a duty of 6d. As this act is merely preparatory to a general and permanent measure on the subject, it is unnecessary more particularly to specify its provisions.



The 7 & 8 Geo. IV. c. 58, regulates the mode of taking the AVERAGE PRICES of corn by appointing inspectors in the different corn-markets of the kingdom, who make weekly returns of the purchases and sales of British corn, in their respective districts, to the receiver of corn returns. From these the average prices, which regulate the duties on importation, are deduced; and which are appointed to be made up quarterly, as follows: namely, the receiver shall, within seven days after the 15th of February, May, August, and November, add together the total quantities of each sort of corn sold, and the prices in the six weeks immediately preceding the 15th of each of the aforesaid months, and thence calculate the average price. This average price is published in the Gazette, and transmitted to the officers of customs.

The restrictions on a free trade in corn between Great Britain and Ireland were continued after the Union till the year 1806, and it is only by the 46 Geo. III. c. 97, that an unrestricted intercourse in this important article of national subsistence is allowed, to the great and mutual benefit of both kingdoms.

CORPUS CHRISTI DAY, a festival instituted in the year 1264, in honour of the sacrament: to which, also, a college in Oxford is dedicated.

CORSNED, or morsel of execration, was a test of delinquency employed in the dark ages. It consisted of a piece of bread or cheese, which was consecrated with a form of exorcism, desiring of the Almighty that it might cause convulsions and paleness, and find no passage, if the accused to whom it was given was really guilty; but might turn to health and nourishment if he was innocent; as the water of jealousy among the Jews was to cause the belly to swell, and the thigh to rot, if the woman was really guilty of adultery.—Historians relate that Godwin, Earl of Kent, in the reign of Edward the Confessor, abjuring the death of the king's brother, at last appealed to his *corsned*, which stuck in his throat, and killed him.

COTTAGE is derived from the Saxon *cot*, and in 4 Edw. I. signifies a house without land annexed. By a later statute, 31 Eliz. c. 7, no man may build a house

without four acres of land to it; so that cottage is any house with less than four acres. The statute of Elizabeth is repealed by 15 Geo. III. c. 23.

**COVERTURE**, any thing that covers, as apparel or coverlet: but in law is applied to a married woman, as under the protection or power of her husband.

**COUNT** signifies the declaration of the complainant in a real action. As declaration is applied to *personal*, so count is applicable to real causes; but count and declaration are often confounded, and made to signify the same thing.

**COUNTIES** are synonymous with shires, and form territorial districts, into which the kingdom is divided for the better government thereof, and the more easy administration of justice. Of these counties there are forty in England, and twelve in Wales. *Counties Palatine* are Lancaster, Chester, and Durham; which appear to have been originally invested with an independent jurisdiction, because they were adjacent to the enemy's countries—Wales and Scotland; and that the inhabitants might have administration of justice at home, and remain there to secure the country from invasion. Besides these counties, there are also *counties corporate*. These are certain cities with lands and territory annexed, having liberties and jurisdiction by grant from the king. As the county of Middlesex, annexed to the city of London, by Henry I.; the county of the city of York, by 32 Henry VIII.; and, also, the cities of Bristol, Gloucester, Norwich, and Newcastle, are counties corporate.

**COUNTY RATES** are certain general assessments made, on every parish in a county, by justices, at quarter sessions, for the repair of bridges, gaols, and houses of correction. They are collected and paid by the high constables of hundreds to treasurers, who advance the money for repairs on presentments made by a grand jury.

**COURT OF STAR CHAMBER**, an oppressive and arbitrary tribunal, erected by 3 Henry VII. but dissolved by 17 Car. I. c. 10.

**CRAVEN**, a word of obloquy, by the pronouncing of which, in the ancient judicial combat, the vanquished

acknowledged his guilt; upon which, judgment was pronounced, and the recreant became infamous. It is of Anglo-Saxon derivation—*Crafion*, and means “to crave,” to beg, to implore,—which to do of an adversary, however hopeless the conflict, was held, in the age of chivalry, cowardly and dishonourable.

**CREST**, a term applied by the heralds to their devices, set over a coat of arms.

**CROWN OFFICE**, an office belonging to the Court of King’s Bench, in which the attorney-general and clerk of the crown exhibit informations, the one *ex officio*, the other by order of the Court.

**CUCKING-STOOL** is an engine invented for the punishment of *scolds* and *eaves-droppers*, by ducking them in water, anciently called a tumbrel, or trebuchet. It was also applied to fraudulent brewers and bakers, who, in such a stool, were immersed, over head in ears, in *stercore*, or stinking water.

**CURTESY OF ENGLAND** is where a man’s wife seized in fee has issue by him *born alive*, which, by any possibility, may inherit, and the wife dies; when the husband holds the lands during his life, and is called tenant by the *curtesy of England*, because the custom does not prevail in any other country except Scotland and Ireland.

**CUSTOM** is long-established usage, and, if it be general throughout the kingdom, it forms part of the common or unwritten law. *General* customs are determined by the judges, but *particular* customs, used in some towns, boroughs, or cities, are determinable by a jury. The distinction between *custom* and *prescription* is this: *custom* is a local usage, not annexed to any person; *prescription* is merely a personal usage and not annexed to any place.

**CUSTOMS.** The 6 Geo. IV. c. 105, amended by the 7 Geo. IV. c. 48, & 7 & 8 Geo. IV. c. 56, repeals all the statutes and parts of statutes relative to the customs, management of customs, navigation, smuggling, shipping, warehousing, registry of vessels, bounties and allowances, the intercourse of other states with our colonies, and the conveyance of passengers. The statutes and parts of statutes repealed amount to 440; the statutes substituted in lieu of them amount to thirteen, including

the two amending statutes, and they comprise an entire body of our commercial, navigation, and shipping laws.— See *Smuggling, Navigation, Registry, and Ships' Passengers*.

**CUSTOMS OF MERCHANTS** are customs prevailing among merchants, which, being serviceable to trade, are admitted by the judges as part of the common law, and upon these customs have originated the laws relative to bills of exchange, marine insurances, &c.

**CURSITORS**, clerks in chancery, who make out original writs. They are twenty-four in number, and to each clerk is allotted a division of counties, in which he exercises his functions.

**CUSTOS ROTULORUM**, the keeper of the rolls or records of the sessions of the peace. By 1 W. & M. c. 21, he may appoint the clerk of the peace, but not sell the office, on pain of forfeiture.

## D

**DANEGELT**, a tax imposed by the Danes, of 1s. and afterwards of 2s. on every hide of land.

**DAY RULE**, a license from the King's Bench to go without the bounds of the prison.

**DEBENTURE**, a written instrument of the nature of a bill, issuing out of a public office, charging government with the payment of a specified sum.

**DE FACTO**, a thing actually done or existing. A king *de facto* is one in actual possession of sovereignty: a king *de jure* is one who has a right to a crown, but is out of possession.

**DEMESNE**. Such lands as were next to the lord's mansion, and which he kept in his own hands for the support of his household and for hospitality, were called his *demesne*.

**DEMURRAGE** is an allowance which freighters make to the master of a ship for the time he may be detained in port, loading or unloading their goods, beyond the period stipulated in their agreement.

**DENIZEN** is an alien who obtains letters patent to make him an English subject, so far as to purchase and devise land. The issue of a denizen, born before denization, cannot inherit to him, but his issue born after

may. A denizen is not exempt from the alien duties, nor can he be of the privy council, or either house of parliament, or have any office of trust, civil or military, or be capable of any grant from the Crown.

DEODAND is any thing, as a horse or carriage, which, by accident, causes the death of a human being, and thereupon becomes forfeited to the king, or the lord of the manor, as grantee of the crown; in both cases, the deodand ought to be sold, and the money distributed to the poor. Deodand, as the derivation of the term imports, *Deo dandum*, was originally intended as an atonement to God for the untimely death of one of his creatures.

DIGNITARY of the church is a bishop, dean, archdeacon, canon, or prebendary.

DILAPIDATION, a term applied when an incumbent suffers the parsonage, or outhouses, to fall down, or be in decay, for want of necessary repairs.

DOCKET, a record in the courts, containing an entry of judgment.

DOME-Book, or *Liber Judicialis*, an ancient work, compiled by Alfred, supposed to comprise the local customs of the several provinces of the kingdom, the penalties for offences, and the forms of judicial procedure. This book is said to have been extant so late as the reign of Edw. IV. but is now unfortunately lost. Mr. Turner is of opinion that the laws of Alfred, which are found in Wilkin's collection, are the Dome-book; if so Mr. Coleridge, in a note on Blackstone, remarks that they do not form a code answering to our expectations of a selection and arrangement of the local customs of the provinces for general use. And Mr. Hallam observes that they are neither numerous nor particularly interesting, and he calls it a loose report of late writers, that Alfred compiled a general code for the government of his kingdom.

DOMESDAY is a very ancient record, made in the time of William I. and now in the Exchequer, fair and legible, consisting of two volumes, a greater and a less, the greater containing a survey of all the lands in England, except the counties of Northumberland, Cumberland,

Westmorland, Durham, and part of Lancashire, which, it is said, were never surveyed, and except Essex, Suffolk, and Norfolk, which three last are comprehended in the lesser volume. It was begun by five justices, assigned for that purpose in each county, in the year 1081, and finished in 1086. The question whether lands are ancient demesne or not is decided by the Domesday of William, from whence there is no appeal.

**DONATIVE** is a benefice merely given and collated by the patron, without either presentation or induction.

**DOWER** is that portion of property to which the widow is entitled, on the death of her husband, for the maintenance of herself and children. Dower is either by *common law* or *custom*. By the *first*, the widow is entitled to one-third of the estate during her life. The *second* varies with the custom of the place; in some manors it is more than one-third, as by *gavelkind* it is one half, and by custom of *free-bench* the widow may claim the whole during her life.—See *Jointure*.

**DROIT D'AUBAINE**, an inhospitable claim, which existed in France, prior to the revolution, whereby the king, at the death of an alien, took possession of all his property, unless he had a peculiar exemption.

**DROITS OF THE ADMIRALTY** form a portion of the ancient hereditary revenues of the crown, arising chiefly from enemies' ships, detained previously to a declaration of war, or coming into port ignorant of the commencement of hostilities, or those taken by non-commissioned captains, and the proceeds of wrecks, and goods of pirates.

## E

**EASEMENT**, a convenience which one neighbour has of another, by grant or prescription; as a way through his land, a water-course, or a prospect over his grounds.

**EAST-INDIA COMPANY.** The territories of the East-India Company are under the sovereignty of the Crown of the United Kingdom, but the possession, revenue, and government of them are granted to the Company until the 10th of April, 1831, absolutely, and after-

wards until three years' notice be given by parliament, and a certain debt, due from the public to the Company, be paid. The several acts which regulate the trade within the limits of the charter of the Company are consolidated and amended by 4 Geo. IV. c. 80, by which act private individuals are allowed to trade in all commodities except tea, within the limits of the Company's charter, and except in the dominion of the emperor of China. But this does not permit any trade without the limits of the Company's charter which cannot now be *legally* carried on. Commanders of vessels *unlawfully* taking persons on board, contrary to 53 Geo. III. c. 155, or giving false lists of passengers, are subject to a penalty of 100*l*.

ELEGIT is a writ of execution against one unable to satisfy the same, directed to the sheriff, commanding him to make delivery of a moiety of the party's land and all his goods, beasts of the plough excepted. The creditor holds the land so delivered to him until his whole debt be satisfied, and during that time he is *tenant by elegit*.

ELISORS. If the sheriff, or coroner, who ought to return the jury, be a party to a suit, or interested therein, the venire shall be directed to two clerks of the Court, or to two persons of the county, named by the Court and sworn, and these two, who are called *elisors*, or electors, shall name the jury.

ELY, *county of*, is only a royal franchise, and not a county palatine, though sometimes improperly reckoned as such.

EMBLEMENTS signify the profits of land sown ; but the word is sometimes used more largely for any products that arise naturally from the ground, as grass, fruit, and other crops.

EMBRING DAYS, so called, either because our ancestors when they fasted sat in ashes, or strewed them on their heads, are of great antiquity in the church ; they are observed on Wednesday, Friday, and Saturday, next after Quadragesima Sunday (or the first Sunday in Lent,) after Whitsunday, Holyrood-day, in Septem-

her, and St. Lucy's day, about the middle of December : hence, in our calendar, these weeks are called *Ember Weeks*.

EMPEROR, a title of sovereignty, and, among the Romans, conferred on celebrated and victorious generals.

ENFRANCHISE, to make free, or incorporate in any society.

ENGLISH. By an arbitrary mandate of Will. I. all pleadings and arguments in courts of justice were directed to be in Norman French ; the writs, records, and judgments, however, were continued in Latin, as they had been from the earliest traces which are to be found of them. It was not till the passing of the statutes, 4, 5, and 6 Geo. II. that all proceedings in courts of justice were directed to be in the English language.

ENROLMENT. By two statutes of Hen. VIII. no deed of bargain and sale is valid, to pass an estate of inheritance, unless the same be enrolled in one of the courts at Westminster, or in the county where the lands lie, with the *custos rotulorum*, within six months after the date. The 5 Eliz. c. 26, authorizes the courts in the counties palatine to enrol bargains and sales in like manner. And the 5 Ann, c. 18, authorizes the registrars of the West Riding, and 6 Ann, c. 35, the registrars of the East Riding of Yorkshire, to make the like enrolments. See *Registry of Deeds*.

ENTAIL is where the succession to an estate is limited or tied up to certain conditions, as to the heirs of a man's body begotten or to be begotten.

ENURE, to take place, or be available.

EPIPHANY, the day when the star appeared to the wise men in the East, generally called Twelfth-Day.

ERIACH. By the Irish Brehon law, in case of murder, the brehon or judge compounded between the murderer and the friends of the deceased who prosecuted, by causing the malefactor to give to them, or to the child or wife of him that was slain, a recompense, which was called an *eriach*. It answers to the ancient *Were* in England, which see.

ESCHEAT is where land or tenements, for want of



heirs, or from forfeiture, escheat, or fall back, to the king or lord of the fee as the original grantor. Escheats are of two kinds. 1. Those forfeitures which belong to the king in right of his prerogative, upon the defect of heirs to succeed to the inheritance. 2. Those which belong to every lord of the manor by reason of his seignory, under the king's grant. The law of escheat provides, upon the feudal principle, that the blood of the person last seized in fee-simple is, by some means or other, utterly extinct and gone ; and, since none can inherit his estate but such as are of his blood and consanguinity, it follows, as a regular consequence, that when such blood is extinct, the inheritance itself must fail, the land must become what the feudal writers denominate *feodum apertum* ; and must result back again to the lord of the fee, by whom, or by those whose estate he has, it was given.

ESCROW is a deed delivered to a third person to hold until some future condition be performed by the grantee, and then to be delivered to him.

ESCUAGE, a kind of knight-service, called service of the shield, whereby the tenant was bound to follow his lord into the wars at his own charge. Also, it has been sometimes intended as a compensation, taken for actual service.

ESPousALS, the contract or mutual promise between a man and a woman to marry each other.

ESsOIGN, an excuse or plea of one summoned, and who is not prepared to answer an action, or to perform suit at a court baron, by reason of sickness or other cause of absence. *Essoign-day of Term* is the first day of the term on which the courts are opened, according to ancient custom, to take essoigns, or excuses, for such as do not appear according to the summons of the writ ; whence it is called the *excuse*, or *essoign*, day of the term.

ESTOPPEL is an impediment or bar of an action arising from a man's own act, or where he is forbidden by law to speak against his own deed ; for by his act or acceptance he may be *estopped* to allege or speak the truth.

ESTRAY is any beast found within a manor or lordship,

and not owned ; in which case, if it be cried in the two next market-towns on two market-days, and is not claimed by the owner within a year and a day, it belongs to the lord of the manor. If the cattle were never proclaimed, the owner may take them at any time. And where a beast is proclaimed as the law directs, if the owner claim it in a year and a day, he shall have it again, but must pay the lord for keeping. But if any other person find and take care of another's property not being entitled to it as an *estray*, the owner may recover it or its value without being obliged to pay the expenses of its keeping.

**ESTREAT.** If the condition of a recognizance be broken, such recognizance becomes forfeited, and, being *estreated*, or extracted from the record, and sent up to the Exchequer, the fine remains to be levied by Exchequer process.—See page 53.

**EXCHEQUER-BILLS.** These are issued from the Exchequer, in consequence of acts of parliament passed every session. The first were issued in 1696, and, being intended as a temporary substitute for money during the re-coinage at that period, some of them were so low as 10*l.* and 5*l.* There are none issued now under 100*l.* and many of them are for 500*l.* 1000*l.* and still larger sums. They bear interest at a certain rate per day for 100*l.* varying with the greater or less amount of unemployed capital in the market; and being distributed among those who are willing to advance their value, they form a kind of circulating medium. After a certain time, they are received in payment of taxes or other moneys due to government, and the interest due on them at the time is allowed in the payment. New exchequer-bills are frequently issued in discharge of former ones, and they are often converted into funded debt by granting capital in some of the stocks, on certain terms, to such holders as are willing to accept them. By the 48 Geo. III. c. 1, persons forging any Exchequer-bill, or any endorsement thereon, are guilty of felony without clergy.

**EXCISE** is an inland duty, paid either upon the consumption of the article, or upon the retail sale, which is the last stage before consumption. It was first esta-

blished in 1643, and has since been extended to almost every article of domestic use. The laws relating to the excise are too numerous even to recapitulate, and the proceedings thereon, in case of violation, are so summary and sudden that a man may be convicted in two days' time, by two commissioners or justices of peace, without trial by jury, in the penalty of many thousand pounds. The laws on the collection and management of the excise are consolidated by an act of last Session, the 7 & 8 Geo. IV. c. 53, but we forbear to recapitulate its provisions, as they are more interesting to the officers in that department than the general reader, and the act itself does not come into operation till after January 5th, 1828.—See *Permit*, *Spirits*, and the next Article.

**EXCISE LICENSES.** The several duties payable on excise licenses in Great Britain and Ireland are repealed by 6 Geo. IV. c. 81, and others substituted in lieu thereof, which commenced on the 5th of July, 1825. The license duties now payable annually are as follow:—

	£	s.	d.
<i>Auctioneer</i> .....	5	0	0
<i>Brewer</i> of table beer for sale, if the quantity brewed within the year, ending 10th of October, previous to taking out a license, shall not exceed 20 barrels .....	0	10	0
<i>Every brewer</i> of other beer for sale, if the quantity brewed shall not exceed 20 barrels....	0	10	0
<i>Retail license</i> for brewers .....	5	5	0
<i>License</i> to sell strong beer only, brewed by any other brewer, in casks containing not less than 4½ imperial standard gallons, or in not less than two dozen reputed quart bottles, at one time .....	3	3	0
<i>License</i> for retailing ale, beer, cyder, and perry, in inns, &c. if rated under 20 <i>l.</i> a-year ..	1	1	0
In houses rated at 20 <i>l.</i> and upwards ....	3	3	0
<i>Candles</i> , wax, or spermaceti candles .....	5	0	0
Chandler, or maker of other candles ....	2	0	0
<i>Coffee</i> , &c. Dealer in .....	0	11	0
<i>Glass-maker</i> . For every glass-house .....	20	0	0
<i>Hides</i> . Every tanner .....	5	0	0

Every tawer .....	2	0	0
Every dresser of skins in oil, and curriers..	4	0	0
Every maker of vellum or parchment .....	2	0	0
<i>Malsters.</i> If the quantity of malt, within the year ending the 5th of July in each year, shall not exceed fifty quarters .....	0	7	6
And 7s. 6d. extra for every fifty quarters additional.			
Every person first becoming a <i>malster</i> to pay 7s. 6d. and the remainder of the duty in- curred within ten days after the 5th of July next, after taking out such license.			
<i>Printed Goods.</i> Every calico-printer, printer, painter, or stainer of silks, linens, cottons, or stuffs .....	20	0	0
Every paper-stainer .....	4	0	0
<i>Plate.</i> Persons trading in gold or silver plate, in which any quantity of gold exceeding two pennyweights, and under two ounces, or any quantity of silver exceeding five pennyweights, and under thirty ounces, in any one piece ( <i>watches excepted</i> ) .....	4	12	0
Ditto of greater weight, and every pawn- broker taking in or delivering out pawns of such plate, and every refiner of gold or silver ( <i>by former acts</i> ) .....	11	10	0
<i>Soap.</i> Every maker of soap for sale .....	4	0	0
<i>Spirits.</i> Every distiller or maker of low wines or spirits .....	10	0	0
Every rectifier or compounder of spirits....	10	0	0
Every dealer in spirits, <i>not a retailer</i> .....	10	0	0
License to retail spirituous liquors or strong waters, if the dwelling-house, &c. shall be rated <i>under 10l.</i> per annum .....	2	2	0
<i>Starch.</i> Every starch-maker for sale .....	5	0	0
<i>Sweets,</i> maker of sweets or made wines, for sale .....	2	2	0
Every retailer of do. ....	1	1	0
<i>Tobacco and Snuff.</i> Every manufacturer, if the quantity, within the year ending the 5th of July previous to taking out the			

license, shall not have exceeded 20,000 lbs. weight .....	5	0	0
Every person who shall first become a manufacturer of tobacco or snuff shall pay 5 <i>l.</i> and within ten days after the 5th of July next, pay such further sum as, with the said sum of 5 <i>l.</i> shall amount to the duty before mentioned.			
Every dealer in or seller of tobacco or snuff.	0	5	0
<i>Vinegar</i> , maker of acid for sale .....	5	0	0
<i>Wine</i> , dealer in <i>Foreign Wine</i> , who shall not have an excise license for retailing spirits, and a license for retailing beer .....	10	0	0
Retailer of foreign wine, who shall have taken out a license for retailing beer, but shall not have taken out an excise license for retailing spirits .....	4	4	0
Retailer of foreign wine, who shall have taken out excise licenses for retailing beer and spirits respectively .....	2	2	0
<i>Wire</i> , every <i>wire-drawer</i> .....	2	0	0

OBSERVATIONS. — The penalties on manufacturers, dealers, and others, neglecting to take out licenses are very considerable, and in some cases amount to 500*l.* All licensed persons are to paint on the outside of the front of their premises, in letters, at least, one inch long, their names, and the word "*Licensed*," adding thereto the words necessary to express the purpose, trade, or business, for which such license has been granted.

EXECUTORY DEVISE is where a future interest is devised that vests not at the death of the testator, but depends on some contingency which must happen before it can vest. It is an established rule that an executory devise is good if it must necessarily happen within a life or lives in being, and twenty-one years, and the fraction of another year, allowing for the time of gestation.

The subject of executory devises has undergone much learned investigation in determining the validity of the will of Peter Thelluson, esq. an eminent merchant of

the city of London. This gentleman had three sons, to whom he bequeathed some inconsiderable legacies ; the rest of his immense property, consisting of lands of the annual value of 4,500*l.* and 600,000*l.* in personal property, he devised to trustees for the purpose of accumulation during the lives of his three sons, and of all their sons who should be living at the time of his death, or be born in due time afterwards, and during the life of the survivors of them. Upon the death of the last, the fund is directed to be divided into three shares, one to the eldest male lineal descendant of each of his three sons ; upon the failure of such a descendant, the share to go to the descendants of the other sons ; and upon the failure of all such descendants, the whole to go to the sinking fund. When he died, he had three sons living, who had four sons living, and twin-sons were born soon after. Upon calculation, it appeared that, at the death of the survivor of these nine, the fund would probably exceed 19 millions ; and, upon the supposition of only one person to take, and a minority of ten years, that it would exceed 32 millions. This extraordinary will did not originate from any dissatisfaction which the testator's family had ever occasioned, though he was resolved that none of his descendants who were *born*, or in *embryo* when he died, should ever enjoy any part of this property.

The Chancellor, Lord Loughborough, Lord Alvanly, then master of the rolls, judges Buller and Lawrence, after hearing counsel for several days, were unanimously of opinion that the will was within the prescribed limits of executory devises. But, to prevent similar instances of eccentricity, the 39 & 40 Geo. III. c. 98, was passed, by which is prohibited any settlement of property for accumulation for any longer term than the life of the settler, the period of twenty-one years from his death, the minority of any person living, or *en ventre sa mere* at the time of his death, or the minority of any person who would be beneficially entitled to the profits under the settlement, if of full age.

EXEMPLIFICATION, of *Letters Patent*, is a copy or transcript of letters patent, made from the enrolment

thereof, and sealed with the great seal of England ; which exemplification may be shown or pleaded as the letters patent themselves.

**EX OFFICIO** is an act done in execution of a power which a person has by virtue of his office. *Ex officio informations* are informations at the suit of the king, filed by the attorney-general, by virtue of his office, without applying to the Court wherein filed for leave, or giving the defendant any opportunity of showing cause why it should not be filed.

**EX-PARTE** is any act, deed, statement, or commission, by one party only, without the participation of the other.

**EX POST FACTO** is used to express something posterior to that which has previously happened; as an *ex post facto* law is a law made subsequently to the offence it is intended to restrain or punish.

**EXPORTS AND IMPORTS.** Upwards of 200 statutes relating to the export and import of various articles of merchandize, the commerce of aliens and denizens, the import of Popish books and relics, the import of bound books, the gauging of wine and other matters, are repealed by the 3 Geo. IV. c. 41: it is needless to specify the statutes repealed, as nearly the whole had become obsolete, and it is only surprising they had so long encumbered the Statute Book.

**EXTENTS.** Writs of extent, at the suit of the king, are of two kinds, either *in chief* or *in aid*.

*Extent in Chief* is sued out on a judgment in scire facias, for the king's debt, or on information for penalties in the Court of Exchequer, against the body, lands, and goods of the defendant. And this is the common mode of proceeding on a bond against the principal debtor, *when the debt is in danger*; but against the sureties it is more usual to proceed by scire facias. No notice is given to the defendant of the execution of this commission, and it is not usual to adduce any evidence of the debt before the jury, except the affidavit of debt called *the affidavit of danger*, stating the debt, the way in which it arose, and that it is in danger of being lost. The defendant taken under an extent cannot be bailed.

*Extent in Aid* is a writ issued at the instance and for

the benefit of a Crown debtor for the recovery of his own debt; or it may be had against a principal debtor to the Crown, at the instance and for the benefit of his surety, who has paid the Crown debt. In these cases the king is merely the nominal plaintiff. Before the 57 Geo. III. c. 117, this writ might have been had by persons indebted to the Crown on simple contract only, but not now, unless it be for a debt due from collectors or receivers of the public revenue, and one or more of them be bound, by bond or specialty of record in the Exchequer, for payment of the same. In order to obtain an extent in aid, an extent *pro formâ* is sued out against the debtor to the Crown, upon which an inquisition is taken: and, if it be found that another person is indebted to him, the Court, or a baron, on an affidavit that the debt is in danger, will grant a *fiat*, or warrant for an immediate extent in aid. The proceedings then are similar to an *extent in chief*. A writ of error on an extent lies in the Exchequer, as also in Parliament.

EXTRA-PAROCHIAL signifies to be out of the bounds or limits of a parish; which extra-parochial places are privileged and exempt from the duties of a parish. Thus, extra-parochial lands may signify lands newly left by the sea, not taken into any parish.

EYRE, *justices in*, from the French *eire*, that is, *iter*, were the origin of the present justices of assize. They were appointed A.D. 1176, with a delegated power from the king, to make their circuit round the kingdom once in seven years, and afterwards, by Magna Charta, once every year. Having become sinecures, they are abolished by 57 Geo. III. c. 61, on the termination of the existing interests; and the salaries of the abolished offices carried to the consolidated fund.

## F

FACULTY, a privilege granted by special indulgence to do that which the law has prohibited. For making these grants, there is a court under the archbishop of Canterbury, called the *Court of Faculties and Dispensations*, which has power to grant dispensation for persons to marry without banns first asked, for a deacon under



age to be ordained, or for an incumbent to hold two or more livings.

**FAIR**, a greater sort of market, instituted for the convenience of traffic, so that traders may be furnished with the commodities they want, at a particular spot, without the trouble and loss of time which must necessarily attend travelling about from place to place: and as this is a matter of universal concern to the commonwealth, no person can claim a fair or market unless it be by grant from the king, or by prescription, which presumes such a grant, 2 *Inst.* 220; *Mod.* 123.

*Fairs in the Metropolis.*—By 3 Geo. IV. c. 55, the magistrates have power to regulate fairs, held in the vicinity of the metropolis, within ten miles of Temple-Bar, and suppress such as are held without charter or prescription. But the owner or occupier of the ground upon which the fair is held may enter into recognizance to try the *legality* of the fair; and in that case the magistrates cannot adopt measures for its suppression till the Court of King's Bench has affirmed, or negatived, its legal existence. By the same act, all business and amusement at fairs, in the neighbourhood of London, must cease at eleven in the evening, and not recommence earlier than the hour of six in the morning. Any house, shop, room, booth, standing, tent, caravan, or other place in the fair, or 300 yards thereof, being open within the prohibited hours, subjects to a penalty of 5*l.* and any person present in such house, room, booth, &c. not removing therefrom at the request of a peace-officer, is liable to a penalty of 5*l.*

**FEALTY**, an oath taken at the admittance of a tenant to be true to the lord of whom he holds his land.

**FEE** is applied to all those lands and tenements which are held by perpetual right.

**FEES.** All fees in courts of justice allowed by act of parliament are established fees; and the several officers entitled to them may maintain actions of debt to recover them. All such fees as have been allowed by the courts of justice to their officers, as a recompense for labour and attendance, are established fees; and the parties cannot be deprived of them without act of parliament.

But where a fee is due by *custom*, such custom, like all others, must be reasonable.—See *Gaols*.

**FEOFFMENT** is a grant of lands to another in fee, to him and his heirs for ever, by the delivery of seisin or possession of the thing granted; and in any feoffment, the grantor is called the *feoffor*, and he that receives is the *feoffee*. It is the most ancient mode of conveying land, to which *livery of seisin* was necessary to give complete effect. Livery of seisin was the feudal investiture, or delivery of corporal possession of the land or tenement, and is necessary to be made upon every grant of an estate of freehold in corporal hereditaments. But in incorporeal hereditaments it is impossible to be made, for they are not the object of the senses, and therefore things incorporeal pass by deed only: neither is it necessary in leases for years or other chattel interest. But the practice is now disused, and livery of seisin is not now made even in the grant of real property.

**FERÆ NATURE**, beasts and birds of a wild nature, in opposition to the tame and domesticated.

**FERRY** is a liberty by prescription of the king's grant, to have a boat for passage, to convey horses and men, for reasonable toll, over a river; and such grant precludes another from setting up a ferry in the same neighbourhood.

**FIAT**, an order or warrant commanding a thing to be executed.

**FIERI FACIAS**, a judicial writ, when judgment is had for debt or damage, by which the sheriff is commanded to levy the same on the goods and chattels of the defendant.

**FIFTEENTHS** were anciently temporary aids, levied on personal property, by grant to the king from parliament.

**FINE** is a final agreement or conveyance upon record, for the settling and assuring of lands and tenements. It is also a sum of money paid for the grant of lands by lease, or on the admission to a copyhold interest. *Fine* signifies, too, a pecuniary imposition awarded by courts of justice for offences against the laws.

**FINES**, offenders in the London prisons, under sentence of imprisonment for long or short periods, are so denominated.

**FIRST-FRUIT**s are the profits payable to the king after the avoidance of every spiritual preferment for the first year, according to the valuation in the King's Book. The *Tenths* were, also, a payment to the king of the tenth part of the annual value of every living. Both first-fruits and tenths were anciently payable to the Pope : but, when the papal power was abolished, in the reign of Henry VIII. this revenue was annexed to the Crown. By 2 Ann, c. 11, the revenue of first-fruits and tenths were granted, for the purpose of being vested in trustees to form a perpetual fund for the augmentation of poor livings : this is usually called **QUEEN ANN'S BOUNTY**, which fund has been subsequently increased by benefactions from individuals, and an annual grant from parliament of 100,000*l.* The trustees were erected into a corporation, and have authority to make rules and orders for its distribution. The principal rules they have established are that the sum to be allowed for each augmentation shall be 200*l.* to be laid out in land, which shall be annexed for ever to the living ; and they shall make this donation, first, to all livings not exceeding 10*l.* a year ; then to all livings not above 20*l.* ; and so in order, whilst any remain under 50*l.* a year. But when any private benefactor will advance 200*l.* the trustees will give another 200*l.* for the advancement of any living not above 45*l.* a year, though it should not belong to that class of livings which they are then augmenting. Livings under the clear yearly value of 50*l.* are not liable to the payment of either first-fruits or tenths.

**FISHERIES.** Several statutes have been made to regulate and encourage the different sea fisheries, especially the herring, the whale, and the Newfoundland fisheries. By 48 Geo. III. c. 110, a bounty of 3*l.* per ton is granted to the owners of vessels employed in the Deep-sea British white herring fishery ; and if a hired vessel be employed, the person hiring the same is entitled to the bounty. And a bounty of 2*s.* is to be paid on every barrel of white herrings taken and cured. The 48 Geo. III. c. 124, grants bounties to ships fitted out for the Southern whale fishery, and ships that sail to the south-

ward of the equator, returning with not less than twenty tons of oil, are entitled to a premium of 300*l*.

**FISHERY**, *Free*, is an exclusive right of fishing in a public stream or river; this is a *royal franchise*, and must be at least as old as the reign of Henry II. no such franchise being grantable by the express provision of *Magna Charta*, c. 16.

**FLEET**, a noted prison in London, so called from a river or ditch that formerly flowed in the front of it. It is a place of considerable antiquity, and was long the receptacle for victims of the Court of Star Chamber. When that odious tribunal was abolished, the Fleet was appropriated to debtors and persons committed for contempt of the Courts of Chancery, Common Pleas, and Exchequer. It was also noted, till the passing of the *Marriage Act*, in 1755, for the marriages celebrated there with much the same forms and solemnity as are now observed at Gretna-Green.

**FLOTSAM**, goods found floating on the sea: these belong to the king or lord of the manor, unless claimed by the owner within a year and a day.

**FOLKMOTE**, an ancient assembly of the people to deliberate on matters of public interest: but the nature and constitution of the Folkmote has not been very precisely ascertained.

**FOREST** is a royal domain for the preservation of the king's game, and subject to peculiar laws, courts, and officers. A private forest is nothing more than a *chase*, being subject to the common-law only, and not to the forest-laws.

**FORMA PAUPERIS** is where any person has just cause of suit, and is so poor that he can make oath he is not worth 5*l*. after all his debts are paid, and excepting the property in question: upon oath made of this fact, and a certificate from a barrister, that he has good cause of action, the Court will permit him to sue in *formâ pauperis*, without paying any fees to counsel, attorneys, or clerks in court. If a cause go against a person suing in *formâ pauperis*, he is liable to imprisonment for the costs of the defendant. And it has been determined, and was confirmed in *Wakely v. Millard*, E. T. 1826, that a

defendant in a civil action cannot be admitted to *defend* as a pauper, but under some act of parliament, and the statutes of the 11 & 23 of Hen. VIII. contain no provision in behalf of the defendant, but merely enable the plaintiff to sue in that form. But, by 2 Geo. II. c. 28, persons arrested on a *capias*, or information, relating to the customs, may be admitted to defend in formâ pauperis.

A FORTIORI, that is with greater reason or stronger argument.

FRANKALMOIGN is a species of tenure whereby a religious corporation held lands of the donor to them and their successors for ever. The nature of the service they were bound to perform for these lands is not strictly defined, further than to pray for the souls of the donor and his heirs. It is the tenure by which almost all the religious houses held their lands; and by which many ecclesiastical and eleemosynary foundations hold them at this day; the nature of the service being, upon the Reformation, altered and made conformable to the protestant doctrines of the Church of England.

FRANK-PLEDGE is an ancient pledge or security, by which the freemen of a neighbourhood bound themselves to mutual fidelity to the king, and due observance of the laws. When any offence was committed, it was forthwith inquired to *What pledge* the offender belonged, and then those of that pledge either produced the offender within thirty-one days, or satisfied for his transgression. The custom of frank-pledge was so strictly observed, that the sheriff at every county court carefully administered the oath to young persons at fourteen, and saw they were settled in some tithing or decennary: hence, this branch of their office was called *view of frank-pledge*.

FUNDED DEBT is that immense capital which, from time to time, has been lent to Government, and which constitutes the *Public debt*; and for which the lenders, or their assigns, receive interest out of the taxes.

GABELLE is, strictly, a tax on salt, but is sometimes applied to any other tax, or to rent, custom, or service.

GAME-KERPERS. These form a sort of police in the execution of the *Game-Laws*, and can only be appointed

by particular persons. They were first introduced by the present Qualification Act, 22 & 23 Car. II. c. 25, which authorises lords of manors to appoint, under their hands and seals, game-keepers, who shall have power, within the manor, to seize guns, dogs, nets, and engines, kept by unqualified persons to destroy game.

A mistaken opinion appears to have been prevalent among game-keepers that they had a right to carry and use fire-arms for the capture of poachers and other unqualified persons. This error was distinctly refuted by Mr. Justice Bailey, (Lancaster Assizes, March 23d, 1827,) who expressly stated that no game-keeper had a right to carry fire-arms for any such purpose, nor to fire at any poacher whatever. No proprietor of game had any earthly power to give such authority to his keeper, who might certainly take into custody any poacher, but it was at his peril to use fire-arms.

By 9 Ann, c. 25, no lord or lady of a manor shall appoint more than *one* game-keeper within one manor, with the power of *killing* game, and his name shall be entered with the clerk of the peace. The lord of a hundred or wapentake cannot appoint a game-keeper, *Doug.* 28; but the owner of a free-warren may. The devisee of a manor in trust may, to preserve game. A corporation may appoint a game-keeper, *Campb.* 457. If the game-keeper kill, shoot, or beat for game, *out* of the manor, he is liable to penalty, as if he had no deputation. But no one is justified in taking from him his dogs or gun, when *out* of the limits of his lord's manor, even in the pursuit of game, 2 *Wils.* 387. A game-keeper may be *discharged* at pleasure, without previous notice, unless there be an express agreement to the contrary; and the occupation of any house he may be permitted to reside in is merely an incident in his vocation, 16 *East.* 33.

GAOL is a prison, or strong place, for the custody of debtors and criminal offenders. The House of Correction for the county of Middlesex, adapted to the separate reception of felons, pursuant to 22 Geo. III. c. 64, and other acts, is a *legal* prison for the safe custody of persons under a charge of high treason: and the Tower is a legal prison for state prisoners, by immemorial usage.

The Court of King's Bench may commit to any prison in England, and the persons so committed cannot be removed or bailed by any other court. By 4 Geo. IV. c. 64, which is the general act for the regulation of prisons, the following rules are directed to be observed in all gaols.

1. The keeper of every prison shall reside therein. He shall not, nor any other officer of the prison, nor any person in trust for him, have any benefit in the sale of any articles to the prisoner, nor in any contract for the supply of the prison.

2. A matron shall be appointed in every prison where female prisoners are kept.

3. The keeper, as far as practicable, shall visit every ward once in twenty-four hours; and, in visiting the female ward, he shall be accompanied by the matron.

4. The keeper to keep a journal of all punishments ordered by him, for the inspection of the justices at quarter sessions.

5. Precautions shall be taken to keep separate the male and female prisoners; to prevent them seeing or conversing with each other: and the prisoners shall be divided into classes, according to the nature of their offences.

6. Female prisoners shall, in all cases, be attended by female officers.

7. Every prisoner sentenced to hard labour shall, unless prevented by sickness, be employed so many hours in every day, not exceeding ten, exclusive of the time allowed for meals, Sundays, Christmas Day, Good Friday, days appointed by public authority for fasting or thanksgiving, excepted.

8. Provision to be made for instructing the prisoners in reading and writing.

9. No prisoner shall be put *in irons*, except in cases of urgent and absolute necessity, of which due notice shall be given to one of the visiting justices.

10. Prisoners not receiving any allowance from the county, whether confined for debt or before trial, shall be allowed to receive, at proper hours, any food, bedding, clothing, or other necessaries, subject to such examina-

tion and restriction as may exclude any thing like *luxury* or *extravagance* within the walls of a prison.

11. Prisoners, *after conviction*, shall not receive other than the gaol allowance.

12. No person shall be discharged from any prison while labouring under any acute or dangerous distemper.

13. All prisoners shall be allowed as much air and exercise as may be deemed proper for the preservation of health.

14. No tap shall be kept in any prison, nor any wine, spirits, beer, or other fermented liquors admitted, unless by a *written* order of the surgeon, specifying the quantity, and for whose use.

15. No *gaming* shall be allowed; and the keeper shall seize and destroy all cards, dice, and other instruments of gaming.

16. No money, under the name of *garnish*, shall be taken from any prisoner under any pretence whatever.

17. And last, on the death of a prisoner, notice shall forthwith be given to one of the visiting justices, as well as to the coroner of the district.

Copies of these rules are to be put up in every prison.

Justices may allow prisoners on their discharge, besides *necessary clothing*, any sum not exceeding 20s. nor less than 5s.

With respect to the EMPLOYMENT of prisoners committed for trial, the 5 Geo. IV. c. 85, s. 16, enacts that the consent of the prisoner to such employment shall be freely given, and shall not be extorted or obtained by deprivation, or threat of deprivation, of any prison or other allowance; and no prisoner, before conviction, shall, under any pretence, be employed on the treadmill, either with or without his consent. The same act also determines the question, whether prisoners *committed for trial*, and unable to maintain themselves, otherwise than by being employed in some kind of work or labour in prison, are entitled to receive any prison allowance of food, without being required so to employ themselves, by enacting—That such prisoners shall be allowed such food as may be *sufficient for health*, without



being obliged to perform any kind of labour or work as the condition of such allowance; and wages that may become due, in consequence of any employment, shall be paid without any deduction on account of such allowance.

**GARNISH**, certain sums which were formerly levied by gaolers on the admission of prisoners. All such exactions are strictly prohibited by the late Gaol Act, mentioned above, the 4 Geo. IV. c. 64.

**GARTER**, *knight of the*, the first personal dignity after the peerage of the realm, is a Knight of the Order of St. George, or of the Garter, first instituted by Edw. III. A.D. 1344.

**GESTATION**, the period of time in females which elapses between conception and parturition. On this subject Dr. Hunter has the following information, which is frequently of importance in questions of medical jurisprudence. 1. The usual period of gestation is nine calendar months, but there is very commonly a difference of one, two, or three weeks. 2. A child may be born alive at any time from three months; but we see none born with powers of coming to manhood, or of being reared, before seven calendar months, or near that time; at six months it cannot be. 3. I have known a woman bear a child, in a perfectly natural way, fourteen days later than nine calendar months; and believe two women to have been delivered of a child, alive, in a natural way, before ten calendar months from the conception. A child has been held *legitimate* born forty weeks and ten days after the death of the husband.

**GILD**, or **GUILD**, a fraternity or company, so called, because every one was to *gildare*; that is, to pay something towards the charge and support of the company.

**GIST OF ACTION** is the particular point on which the action turns, without which it is not maintainable.

**GLEANNING**. Two actions of trespass have been brought, in the Common Pleas, against gleaners, with an intent to try the general question, namely, whether such a right existed; in the *first*, the defendant pleaded that he, being a poor, necessitous, and indigent person, entered the plaintiff's close to glean; in the *second*, the defendant's

plea was the same as before, with the addition that he was an inhabitant *legally settled within the parish*: to the plea, in each case, there was a general demurrer. Mr. J. Gould delivered a learned judgment in favour of gleaning, but the other three judges were clearly of opinion that this claim had no foundation in law, that the only authority to support it was an extra-judicial dictum of Lord Hale; that it was a practice incompatible with the exclusive enjoyment of property, and was productive of vagrancy and many mischievous consequences.

GLEBE is the land belonging to a parish church, or of which the rector or vicar is seised in right of the church.

GOLD. Neither gold nor silver is adapted to the purposes of coin or commerce (except to beat into leaf gold or silver) till it has been hardened by the admixture of some inferior metal, as copper or brass. Though most nations differ in the quantity of such alloy, as well as the same place at different times, yet in England the *standard* for gold and silver coin has for a long time been as follows; namely, twenty-two parts of fine gold and two parts of copper, being melted together, shall be esteemed the true standard for gold coin. And that eleven ounces and two penny-weights of fine silver and eighteen penny-weights of copper, being melted together, shall be esteemed the true standard for silver coin, called *sterling silver*. By 14 Geo. III. c. 70, all officers of the revenue are required to cut every piece of gold coin tendered to them, if it is not of the current weight, according to the king's proclamation. And, by 13 Geo. III. c. 71, *any person may cut counterfeit gold money, or what has been unlawfully diminished.*—See *Silver*.

GRAIN, the twenty-fourth part of a pennyweight. The origin of all weights in England was a *grain* or corn of wheat, gathered out of the middle of the ear, and being well dried, thirty-two of them were to make one pennyweight, twenty pennyweights one ounce, and twelve ounces one pound. But, in later times, it was thought sufficient to divide the same pennyweight into twenty-four equal parts, still called grains, being the least weight now in common use.

**GRAMPOUND.** This borough is excluded from returning burgesses to parliament by the 1 & 2 Geo. IV. c. 47, on account of *notorious and general bribery and corruption*. In lieu of the two members for Grampound, two additional members have been granted to Yorkshire, making four knights of the shire the representatives of that county.

**GROOM OF THE STOLE** is an officer of the king's household, whose precinct is the king's bedchamber; *stole* signifies a robe of honour.

**GYPSIES**, or, as they are sometimes termed, *Egyptians*, from the supposed place of their origin, form a singular tribe of wanderers, who first made their appearance in Europe about the beginning of the fifteenth century. They affect a peculiar dialect and complexion, and support themselves by begging, pilfering, and fortune-telling. The laws were formerly very severe against them, and Sir Matthew Hale informs us that no less than thirteen gypsies were executed at one Suffolk assizes, a few years before the Restoration. It is only by 1 Geo. IV. c. 116, that the 5 Eliz. c. 20, which made it felony without clergy to associate with gypsies for one month, or for gypsies to be found in the kingdom for the same period, is repealed. They are now punished under the vagrant act; but, notwithstanding the efforts to extirpate them, we still observe them in considerable numbers even in the vicinity of London, especially about Norwood.

## H

**HABEAS CORPUS**, a species of writ, of which there are several kinds. For an account of that which affects the *personal* liberty of the subject, and, consequently, most interesting to the general reader, see page 23.

**HACKNEY-COACHES.** In 1654 only 200 hackney-coaches were allowed within London, Westminster, and six miles round, under the direction of the court of aldermen. By 13 & 14 Car. II. c. 2, 400 were licensed, and the money arising thereby was applied to repairing the streets. This number was increased to 700 by 5 W. & M. c. 22; and the duties vested in the Crown. By

subsequent statutes, the last of which is the 55 Geo. III. c. 159, the number allowed to be licensed has been augmented to 1300 ; of which number 400 may be hackney-chariots.

The commissioners appointed to carry these acts into effect may, with the approval of the Treasury, license any number of carriages with two wheels, drawn by one horse, as may be specified in such approval. These cabriolets are under the same regulations as hackney-coaches and chariots, and pay the same duty—namely, 5s. per week.

*Fares of Hackney-Coaches.*                      s.   d.

Within one mile.....	1	0
From one mile to one and a half.....	1	6
From one and a half to two.....	2	0
From two to two and a half.....	3	0
From two and a half to three .....	3	6
So in like manner the sum of 6d. for every further distance within and not exceeding half a mile, and an <i>additional</i> 6d. for every two miles completed.		

*By time*, the fare is, for thirty minutes, 1s. ; for forty-five minutes, 1s. 6d. ; and so for any further time, after the rate of 6d. for every fifteen minutes.

The coachman may claim his fare either by *distance* or *time* ; but not by the day.

Coaches driven into the *country* in the day time are entitled to an additional 6d. on every mile above four ; but not to be allowed any extra sum for a less distance.

Coaches engaged after seven in the evening, from Michaelmas to Lady-day, or after nine, from Lady-day to Michaelmas, are to be paid (over the usual fare) the full fare to the nearest continued carriage-way pavement, or to any standing beyond such continued carriage-way pavement.

The fares of CABRIOLETS are one-third less than hackney-coach fares ; so the fare of a cabriolet for the first mile is 8d. for a mile and a half, 1s. and so on. They are not compellable to carry more than *two* persons.

*Regulations of Hackney-Coaches.*

Every hackney-coach is to carry four, and a chariot

three adult persons inside, and a servant out, if required ; but 1s. extra to be paid for every person above this number. And if such extra person be taken into country and brought back 1s. more may be demanded.

Coachmen are not obliged to take luggage without receiving something additional to the fare. When desired to wait, they may demand a reasonable deposit, to be accounted for when discharged.

Drivers are liable to the following penalties :—

For not taking, within four days, property left in	£	s.
a hackney-coach to the Hackney-Coach-Office,		
Essex-street, Strand .....	5	0
For being without plate or number on the outside	5	0
For not placing the number in the inside of the		
roof .....	10	0
For preventing a person taking the number, or		
giving a false one.....	2	0
For having the coach in a dirty condition, with		
broken glasses, or without check-string .....	0	10
For refusing a fare, (unless they have been out		
twelve hours,) or exacting more than their legal		
fare, penalty from .....	10s. to	3 0
For abusive language, furious driving, intoxica-		
tion, or other improper behaviour, 1l.; or		
owner and driver.....	3	0

**HÆRETICO COMBURENDO**, a writ that lay against a heretic, who having been convicted of heresy by the bishop, was delivered over to the secular power to be burnt. It was abolished by the 29 Car. II. though we have instances of it being put in execution upon two anabaptists so recent as the 17 Elizabeth, and upon two Arians, in the 9 James I.

**HALF-BLOOD** is where the relationship proceeds not from the same *couple* of ancestors, which constitute a kinsman of the *whole* blood, but from a single ancestor only ; as where two persons are derived from the same father and not from the same mother, or the contrary.

**HALL**, the Saxon term for mansion-house or dwelling.

**HANAPER OFFICE**, one of the offices belonging to the Court of Chancery. Writs relating to the business of the subject and their returns were anciently kept in a ham-

per, in *hanaperio* ; and the others, relating to matters in which the Crown was interested, were preserved in a little sack or bag, in *parva бага* : hence has arisen the distinction of the *hanaper* and *petty bag office*, both of which belong to the common law court in Chancery.

**HANDSALE.** Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain, a custom which is still frequently observed in verbal contracts. A sale thus made was called *hand-sale* ; till, in process of time, the same word was used to signify the *earnest money* given after the shaking of hands, or in stead thereof : in the North it is pronounced *hansel*.

**HANSE**, an old gothic word, signifying a society of merchants, for mutual assistance and co-operation ; hence the *Hans Towns*.

**HANS TOWNS.** Towards the middle of the thirteenth century, the nations round the Baltic were extremely barbarous, and infested that sea with their piracies ; this obliged the cities of Lubeck and Hamburgh, soon after they began to open a trade with these people, to enter into a league of mutual defence. They derived such advantages from this union that other towns acceded to the confederacy, and in a short time eighty of the most considerable cities scattered through the countries which stretch from the bottom of the Baltic to Cologne, on the Rhine, joined in the famous *Hanseatic League*, which became so formidable that its alliance was courted, and its enmity dreaded, by the greatest monarchs. The members of this powerful association formed the first systematic plan of commerce known in the Middle Ages, and conducted it by laws enacted in their general assemblies. Such, however, are the vicissitudes of commercial greatness that scarcely any vestige now remains of the great wealth said to have been possessed by the Hans Towns ; and it is even uncertain where some of them are situated, or to what towns in Europe the Latin names given to them belong.

**HARBOUR.** The king is empowered by statute to assign the limits of all ports, wharfs, and quays, for the exclusive landing and loading of merchandise. The erection of beacons, light-houses, and sea-marks, is also a branch of the royal prerogative. By

the 8 Eliz. the corporation of the Trinity-house are empowered to set up beacons and sea-marks wherever they think necessary ; and if the owner of the land, or other person, shall destroy or remove them, he forfeits 100*l.* By 46 Geo. III. c. 153, no pier, quay, wharf, jetty, breast, or embankment, shall be erected in or near to any public harbour, without giving one month's notice to the Admiralty, on pain of 200*l.* to be recovered by action or information.

**HARRIERS**, small hounds between the fox and beagle tribe, for hunting the hare.

**HART**, a stag, or male deer of the forest, five years old.

**HEADBOROUGH** was anciently the head of the frank-pledge in boroughs, or the chief of the ten pledges or tithing ; the other being denominated *landborows*, or inferior pledges. Headborough is now a higher kind of constable.

**HEARTH-TAX**, a duty imposed, by 14 Car. II. c. 2, on every hearth and stove of every dwelling in England and Wales. It was much complained of as oppressive, and repealed by 7 & 8 W. III. c. 18, which substituted an equally grievous duty on windows.

**HEGIRA**, an epoch from which the Turks and Arabians compute events, commencing from the day of Mahomet's flight from Mecca to Medina, which was July 16, A.D. 622.

**HEIR-LOOMS** are such goods and personal chattels as, contrary to the nature of chattels, go by *special* custom to the heir along with the inheritance. The termination *loom* is of Saxon original, in which language it signifies a *limb* or *member* ; so that a heir-loom is nothing more than a limb or member of the inheritance. Family pictures may, by will, be rendered heir-looms. 1 *Swanst.* 537.

**HENCHMAN**, a running footman anciently attendant upon persons of quality.

**HEPTARCHY**. The kingdom of England under the Saxons was divided into a heptarchy, consisting of seven independent kingdoms, peopled and governed by different colonies of Jutes, Angles, and the like : these were all reduced into one kingdom, by Egbert, King of the West Saxons, and grandfather of Alfred, in the year

827 or 828: Egbert is, therefore, styled the first King of England.

**HERIOT**, a relic of villein tenure, and consists in a surrender of the best beast, goods, or piece of plate, to the use of the lord on the death of the tenant.

**HERALDS**. In days of chivalry, the principal employment of the herald was to carry messages of defiance or proposals of peace from one sovereign prince or chieftain to another; and in such high esteem was the office held, that the senior heralds were styled *kings*, and the sovereign himself vested them with the dignity by pouring a gold cup of wine on their heads and proclaiming their style and title. In modern times, the principal business of the herald is to proclaim peace and war, to superintend all royal and state ceremonies, particularly coronations, and the installation of the knights of different orders; to arrange public funerals, to record and emblazon the arms of the nobility and gentry, and check all spurious assumptions in this respect.

**HERALDS' COLLEGE**. The heralds of England were first incorporated by Rich. III. who gave them a magnificent mansion for their college. The Earl Marshal of England is superior of the college, and has the right of appointing the members of which it consists; namely, three *kings* at arms, eight *heralds* at arms, and four *pursuivants* at arms. The *kings* are Garter, Clarencieux, and Norroy. *Garter* was instituted by Hen. V. for the service of the Order of the Garter, and is acknowledged as principal king at arms. Clarencieux and Norroy are called "provincial kings," the former having jurisdiction over that part of England south of the Trent, and the latter over the country north of that river. The distinguishing colour of garter is blue; of the two provincial kings, purple. The eight heralds are stiled of York, Lancaster, Cheshire, Windsor, Richmond, Somerset, Hanover, and Gloucester, who rank according to seniority of appointment. The four *pursuivants* are blue-mantle, rouge-croix, rouge-dragon, and portcullis. A building has lately been erected for the Herald's College, near Charing-Cross, and on the first Thursday of every month a chapter is held, in which heraldic matters are discussed.



**HIGH COMMISSION COURT**, an oppressive tribunal, intended to take cognizance of ecclesiastical offences. It was abolished by the 16 Car. I. and an attempt to revive it during the reign of Jac. II. hastened the expulsion of that prince.

**HIGH CONSTABLE OF ENGLAND**. The duties of this office were to regulate tilts and tournaments and other feats of chivalry performed on horseback. It has been disused ever since the attainder of Stafford, Duke of Buckingham, under the reign of Henry VIII. and, in France, it was suppressed about a century after, by an edict of Louis XIII.

**HIGHWAY**. This appears to be any public way which leads from one town to another, and this, whether it be only a foot-way, a horse and foot way, or a cartway. A way to a parish, which is only for the particular inhabitants of such parish, is a *private* way only, and not a highway, because it does not belong to the public, but to some particular persons, each of whom may have an action on the case for a nuisance thereon.—See *Turnpike*.

**HIGLER**, a person who carries from door to door, and sells, by retail, small articles of consumption.

**HOLIDAYS**. By several statutes, no holidays are allowed to be kept at the London or other wet docks, or at any of the custom-houses, or at the chief or any other office of excise, except on 'Christmas-day and Good-Friday, general fast and thanksgiving days, and the anniversaries of the restoration of Charles II. and of the coronation and birth of the king. The fifth of November is to be kept as a day of thanksgiving, by 3 Jac. I. The 29th of May is to be an anniversary thanksgiving, by 12 Car. II. And 30th of January, as a day of humiliation, by 12 Car. II.

**HOMAGE**. On the grant of lands under the feudal system, besides the oath of *fealty*, or declaration of fidelity to the lord, which was the origin of our oath of allegiance, the vassal or tenant, on investiture, did *homage* to his lord, openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of the lord, who sat before him, and there declaring that *He did become his MAN, from that day forth, of life, and limb, and earthly honour*.

**HONOUR**, an inferior sort of manor or seignory. A man may claim an honour by grant or prescription; but the king cannot make an honour without an act of parliament. The number of honours now existing in the kingdom is eighty.

**HORSES, Sale of.** The property in horses is not easily altered by sale, without the express consent of the owner; for a purchaser gains no property in a horse that has been *stolen*, unless it be bought in a *fair* or *open* market, according to the directions of the statutes. By 2 & 3 Ph. & M. c. 7, and 31 Eliz. c. 12, the keeper of every fair or market is bound to appoint a certain open place for the sale of horses, and one or more persons to take toll there, and keep the place from ten in the forenoon till sunset. The owner's property in a horse *stolen* is not altered by sale in a fair, unless it be *openly* ridden, led, walked, or kept standing for one hour at least, and was registered, for which the buyer pays 1*d.* Sellers of horses in fairs or markets must be *known* to the toll-taker, or other person, who will testify his knowledge of them, which is registered. Sales made otherwise are void. The owner of a horse *stolen*, notwithstanding the *legal sale*, may redeem the same on the payment or tender of the price within six months after it is *stolen*.

The agreement for the sale of horses has been held to be an agreement "relating to the sale of goods" within the statute of Frauds, and does not require a *stamp*; therefore, a written receipt for the price, containing the warranty, or other condition of sale, is admissible in evidence, stamped as a common receipt-stamp, without an agreement-stamp, and is the usual mode in which the contract is made and proved, *Skrine v. Elmore*, 2 Camp. 407.

Mere general terms of *warranty* are not considered binding unless it can be shown they were accompanied with fraud, so as to vary the terms of the contract. But a particular and express warranty goes directly to the foundation of sale, and is the gist of the contract, and is, therefore, in its terms always to be strictly construed, 1 *Moore*, 109.

A warranty of *soundness* may be defined, in its enlarged sense, a guarantee from constitutional defects; but, in its practical sense, is construed so as to exclude every defect by which the animal is rendered less fit for present use and enjoyment, 1 *Stark.* 127. A defect arising from a temporary injury capable of being speedily cured, and not interfering with such enjoyment, the horse is not, on that account, to be held *unsound*; still less if the purchaser be informed of it, and admits the exception into the terms of the contract, 2 *Esp.* 673.

With respect to *exchanges*, there is no difference between sales and exchanges, but a delivery on one or both sides is essential to establish the contract, 3 *Salk.* 157.

**HOSPITALS** are eleemosynary foundations constituted for the perpetual distribution of the free alms or bounty of the founders for the maintenance of the poor, sick, and impotent. By 39 Eliz. c. 5, any person seised of an estate in fee-simple, may, by deed enrolled in Chancery, found an hospital for the relief of the poor, to continue for ever; and, by two more statutes of the same reign, the Lord Chancellor is empowered to issue a commission to inquire into the abuses and breaches of trust in hospital foundations.—See *Public Charities*.

**HOVEL** is defined, by Cowel, a place where husbandmen set their ploughs and carts out of the rain or sun.

**HUE AND CRY.** A hue, from *huer*, “to shout,” is the old common law process of pursuing, with horn and with voice, all robbers and felons. Upon every robbery committed, the statute of Winchester, 13 Edw. I. directs that suit shall be made from town to town, and from county to county, and that hue and cry shall be raised upon the felons, till they be delivered to the sheriff. And, that such hue and cry may more effectually be made, the hundred is bound to answer for all robberies therein committed, unless they take the felon. But this statute, as well as the 8 Geo. II. c. 16, on the same subject, is abolished by the 7 & 8 Geo. IV. and the old remedies against the hundred seem chiefly restricted to the recovering damages committed by riotous assemblies.

Under the 7 & 8 Geo. IV. c. 27, s. 2, if any church,

chapel, house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary; or any building or erection used in carrying on any trade or manufacture, or any machinery, whether fixed or moveable, or employed in any manufacture, or any steam-engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, shall be feloniously demolished, wholly or in part, by any persons riotously and tumultuously assembled together, in every such case the inhabitants of the hundred, wapentake, or other district in the nature of a hundred, in which any of the said offences shall be committed, shall be liable to yield full compensation to the persons damnified by the offence, not only for the damage so done to any of the subjects before enumerated, but, also, for any damage which may at the same time be done to any fixture, furniture, or goods, in any such church, chapel, house, or other buildings or erections. But, in order to recover against the hundred, the action must be commenced within three calendar months, and the parties injured must go before a justice within *seven* days after the commission of the offence, and there state, upon oath, the names of the offenders if known, and enter into recognizances to prosecute them when apprehended.

Such action cannot be instituted against the hundred where the damage sustained is to a *less* amount than 30*l.*; but in this case the party may be indemnified by a petty session, application having, in the first instance, been made in writing within seven days after the commission of the offence, to the high constable of the hundred, and a notice of such application posted by the claimant on the church or chapel door of the parish where the injury has been sustained.

**HUNDRED**, a well-known division of counties, first adopted by king Alfred, and which consisted of ten tithings, or a hundred families. In the northern counties, hundreds are termed *wapentakes*.—See *Hue & Cry*.

**HUSTINGS** is a court held before the lord mayor, re-

corder, and sheriffs of London, and is the principal and supreme court of the city.

**HYPOTHECATIO.** When a ship at sea springs a leak, or is otherwise in danger of being lost, for want of provisions or necessaries, the master may *pledge*, or *hypothecate*, the ship and goods, or either of them, for such necessaries as are wanting, which power is impliedly given him in constituting him master, and which he may exercise rather than the ship should be lost or the voyage defeated. The master, however, cannot hypothecate the ship or goods for any debt of his own, nor in any case but for the preservation of the ship and the completion of her voyage. Neither is the owner *personally* liable for any contract of his beyond the value of the ship and cargo.

# I

**ICH DIEN**, the motto belonging to the arms of the Prince of Wales, signifying *I serve*; it was formerly the motto of John, King of Bohemia, slain in the battle of Cressy, by Edward the Black Prince, and taken up by him to show his subjection to his father, Edward III.

**ILLUMINATE** signifies, in the old books, to draw the initial letters in gold and silver, and those persons who excelled therein were called *illuminators*.

**IMPARLANCE.** Time to plead. Leave given by the Court to the defendant to answer the plaintiff at another time.

**IMPEACHMENT** is an indictment or accusation presented by the Commons of the United Kingdom to the House of Lords, as the Supreme Court of criminal jurisdiction. A commoner cannot be impeached before the lords for a *capital* offence, but only for high misdemeanor; a peer may be impeached for any crime. On the trial of Warren Hastings, a doubt was raised whether the lords are bound by the same rules of evidence as are admitted in criminal trials in the inferior Courts. This was satisfactorily removed by the late Professor Christian, who has shown that the House of Lords, in cases of judicature, are bound by the same rules of testimony as are observed in all other Courts.

**IMPRESSMENT OF SEAMEN.** The right of impressment

for the sea-service by the king's commission has long been a matter of dispute and submitted to with reluctance, though it has been shown, by Sir Michael Foster, that the *practice* of impressing and granting powers to the Admiralty for that purpose is of very ancient date, and has been uniformly continued from a very early period. The legal difficulty arises from this; no statute has expressly declared such power to be in the Crown, though many very strongly imply it. The 2 Rich. II. c. 4, notices the arrest and retention of mariners for the king's service; and several acts from that time up to the reign of Geo. III. show, by the special exemptions they grant from impressment, that the power of impressment does somewhere exist. And if such power does exist, it must, from the nature of our constitution, as well as the frequent mention of the king's commission, reside in the Crown. In the case of the *King v. Jubbs*, Lord Mansfield said "the power of pressing is founded on immemorial usage allowed for ages." And lord Kenyon declared, in a similar case, that the right of impressing is founded on the common law, and extends to all persons exercising employment in the sea-faring line. Any exemptions, therefore, which such persons may claim must depend on the provisions of positive statutes. The freemen and livery of London are not exempted from being impressed for the sea-service, if, in other respects, fit subjects for the service, 9 *East*. 466. Nor is a seaman serving in the merchant service, though a freeholder; nor is the master of any vessel, merely as such, exempt, especially if his appointment appear to be collusive, 14 *East*. 346. If a sailor on board a merchant ship be pressed by a king's ship, he is not entitled to any proportion of his wages from the former, unless she complete her voyage. 2 *Campb*. 320.

IMPROPRIATION.—See *Appropriation*.

INCEST, a cohabiting of persons within the degrees prohibited by law. In 1650, incest and adultery were made capital offences; they are now cognizable as criminal offences only by the ecclesiastical courts.

INCUMBENT, a parochial minister with cure, who

either does or ought to reside for the care of the church to which he belongs.

**IN ESSE** signifies any thing in actual being, distinguished from *in posse*, or a thing that is not, but possibly may come into being ; such as an unborn child.

**INFANTICIDE.** The public is much indebted to Dr. William Hunter for the philosophical manner in which he examined the general value of physiological testimony in proof of the commission of *child-murder*. Previous to his enlightened dissertation on the "Uncertainty of the Signs of Child Murder," in the case of bastard children, it is to be greatly feared that many unfortunate women had fallen the innocent victims of false theory and prejudice. The floating of the lungs, which had been considered an infallible proof of a child having been born alive, he utterly disproves, and shows that so many accidental causes may produce the death of infants newly born, without criminality in the mother, that it is fair to infer that nothing but unequivocal and direct evidence of violence should be admitted as sufficient proof of guilt.

**INFODATION OF TITHES**, the granting them to mere laymen, which was prohibited by a decree of the council of Lateran, A.D. 1179.

**INFIDELS.** It would appear, from Hawkins, confirmed by some late decisions, that persons not believing in a future state of reward and punishment, or denying the Holy Scriptures to be of divine authority, cannot be sworn to give evidence. But Turks, Gentoos, and Jews may be sworn according to the ceremonies of their own religion, even in criminal trials; and, in civil cases, the evidence of Quakers is received on their affirmation.

A note of Professor Christian implies some uncertainty in the practice of the courts in this respect. "I have known a witness," says he, "rejected and hissed out of court, who declared that he *doubted* of the existence of a God and a future state. But I have since heard a learned judge declare, at *Nisi Prius*, that the judges had resolved not to permit *adult* witnesses to be interrogated respecting their belief of a deity and a

future state. It is, probably, more conducive to the course of justice that this should be presumed till the contrary is proved. And the most *religious* witness may be scandalized by the imputation which the very question conveys." 3 Bl. n. 14.

INFORMATION, *in the Exchequer*, is a summary process instituted at the suit of the Crown. It is grounded on no writ under seal, but merely on the intimation of the Attorney-general, who "gives the Court to understand and be informed of" the matter in question; upon which the accused is put to answer, and trial is had as in suits between individuals. It is chiefly used to recover penalties for offences against the revenue laws, and for trespasses committed on the lands of the Crown. See page 41.

INJUNCTION. A prompt interference of the Court of Chancery, by which it restrains the commission of any act, by which fraud or injustice may be perpetrated. It may be obtained, 1st. To stay waste. 2d. To restrain infringement of patent. 3d. To preserve copyright. 4th. To restrain negotiation of bills, &c. or the transfer of stock. 5th. To stay proceedings in other courts. 6th. To prevent nuisances; and, lastly, in most cases where the rights of others are invaded, and the remedy by the ordinary course of law is too remote or dilatory, to prevent increasing damage.

INSTITUTION is the ceremony by which the bishop commits to the clerk, who is presented to a church-living, the cure of souls.

INSTITUTIONS OF CLARENDON are certain institutions made in the reign of Henry II. A.D. 1164, in a great council, held at Clarendon, in which the king restrained the power of the Pope and the clergy, and greatly narrowed the exemptions the latter claimed from the secular jurisdiction.

INUENDO is a word used in declarations and law proceedings to ascertain the meaning of initials or doubtful words, by averring that the sense appropriated to them is the true meaning. Thus, for instance, in action of slander, for asserting of A to B, "*he is a traitor*," it must be averred under an inuendo, in the declaration,



that the pronoun *he* means the person A; and that *traitor* means that the said A had betrayed his allegiance.

**INVENTORY**, a schedule containing a list and true description of goods and chattels, with their appraised value.

**IN VENTRE SA MERE**, a child not yet born, but of which the mother is then pregnant. It is applied where a woman is with child at the death of her husband, and which, if it had been born, would have been heir to the estate. In all cases where a daughter or female comes into land by descent, a son born after is entitled to possession.

**IPSO FACTO**, by the deed itself. So, if a person obtain two livings in the church, without being qualified by dispensation, the first living is void *ipso facto*, without any declaratory sentence, and the patron may present to it.

**IRELAND**. The inhabitants of Ireland are partly descended from the English, who planted it as a kind of colony after the conquest of it by Hen. II.; and the laws of England were then received and sworn to by the Irish nation, assembled at the council of Lismore. Ireland, however, until the late Union, was a distinct state; and, up to the 22 & 23 Geo. III. a dependent subordinate kingdom on the Crown of Great Britain. Since these acts, the important measure of an UNION between Great Britain and Ireland has taken place, by which the national rights and interests of the two countries have been more intimately united and consolidated.

By the articles of the Union, which were ratified by act of parliament, on the 2d of July, 1800, it is declared that the kingdom of Great Britain and Ireland shall, on the 1st of Jan. 1801, and for ever after, be united into one kingdom, by the name of the United Kingdom of Great Britain and Ireland: that there shall be one parliament, stiled the Parliament of the United Kingdom of Great Britain and Ireland: that four lords spiritual of Ireland, by rotation of sessions, and twenty-eight lords temporal, elected for life, by the peers of Ireland, shall sit in the House of Lords; and one hundred commoners, representing the commons of Ireland, shall sit in the House of Commons: that the churches of England and Ireland shall be united into one Protestant episcopal

church, to be called the United Church of England and Ireland: that the subjects of both nations shall be entitled to the same privileges with regard to trade and navigation, and also in respect of all treaties with foreign powers: that all bounties and prohibitions upon the importation of merchandize from one country to the other shall cease; but the importation of certain articles specified in the act shall be subject to countervailing duties: that the sinking funds and the interest of the public debts of each country shall be defrayed by each separately: that, for the space of twenty years after the Union, the contributions of Great Britain and Ireland towards the public expenditure in each year shall be in the proportion of fifteen to two: lastly, that the laws and courts of each kingdom shall remain the same as they are now established, subject to such alteration, by the United Parliament, as circumstances may require.

Since the Union, other measures have been adopted for cementing more closely the interests of the two countries. In 1819, an act passed for consolidating the Exchequers of England and Ireland; and, in the session of 1823, various alterations were sanctioned by parliament for facilitating the abolition of the countervailing duties, and placing the mercantile intercourse of the two nations on the footing of a coasting trade.

**ISLAND** or **ISLE**, is a land enclosed in and environed by the sea or fresh water. According to the civil law, an island in the sea that has no owner, by the law of nations, belongs to him who first discovers it. But, by the law of England, if an island arise in the middle of a river, it belongs in common to those who have lands on each side; or if it be nearer to one bank than the other, it belongs to him who is proprietor of the nearest shore.

**ISLE OF MAN.** The Isle of Man is a distinct territory from England, and is not governed by our laws; neither does any act of parliament extend to it, unless expressly named therein. It was formerly a subordinate feudatory kingdom, subject to the kings of Norway; then to king John, and Henry III. of England; afterwards to the kings of Scotland, and then again to the Crown of England: and, at length, we find Henry IV. claiming it

by right of conquest, and disposing of it to the Earl of Northumberland, upon whose attainder it was granted to Sir John de Stanley. After several other vicissitudes, on the death of James, Earl of Derby, in 1735, the Duke of Atholl succeeded to the island, as heir general by a female branch. In the mean time, though the title of king had long been disused, the Earls of Derby, as lords of Man, maintained a sort of regal authority there by assenting or dissenting from laws; and no English writ or process was of any authority in Man. Such an independent jurisdiction being found inconvenient for the purposes of justice, by affording a ready asylum for debtors, outlaws, and smugglers, the interest of the then proprietor was purchased by government in 1765, and the island and its dependencies became vested in the Crown, and subject to the regulations of the British excise and customs. The Isle of Man, however, retains its peculiar laws, except as regards the revenue, so that it is still a convenient refuge for debtors and outlaws. The Atholl family, too, hold their landed property in the island, their manorial rights, and the patronage of the bishopric, and other ecclesiastical benefices.

## J

**JACITITATION OF MARRIAGE** is where a party holds out a *false* pretension of marriage, so as to impose on another a matrimonial liability. The remedy for this injury is in the ecclesiastical courts.

**JEOPAIL** is derived from the French *j'ai faille*, signifying an oversight in pleading, or other law proceeding. The allowance of such mistakes being found to interrupt and retard the true course of justice, the legislature has, by several statutes, prevented them taking effect, when they are mere matter of form, after a verdict has established on which side, in the opinion of the jury, the right in question lies. Omissions and errors of a mere technical nature in indictments have been partly provided for by a recent statute, 7 Geo. IV. c. 64 (page 42); but the acquittal of Sheen and some other decisions during the summer assizes show that further improvement is required in this branch of criminal justice.

**JERSEY**, Guernsey, Sark, Alderney, and their appendages, were parcel of the Duchy of Normandy, and were united to the Crown of England by the first princes of the Norman line. They are governed by their own laws, which are, for the most part, the ducal customs of Normandy, being collected in an ancient book of great authority, entitled *Le Grand Coustumier*. The king's writ or process from the courts of Westminster is there of no force; but his commission is. They are not bound by common acts of parliament, unless particularly named. All causes are originally determined by their own officers, the bailiffs and jurats of the island; but an appeal lies from them to the king and council in the last resort.

**JEWS.** For a long period the Jews were the objects of cruel and vindictive persecution; so much so, as to be under a proclamation of banishment; and it was only during the protectorship of Oliver Cromwell that their residence in the kingdom became legally tolerated; but the hardships they formerly suffered are now removed, and Jews as well as others equally participate in the protection of the laws. There is, however, one statute still in force, which has a partial operation,—namely, the 1 Ann, c. 30, which ordains that if Jewish parents refuse to allow their *Protestant* children a suitable maintenance, the Lord Chancellor, on complaint, may make such order therein as he thinks proper. By 10 Geo. I. c. 4, persons professing Judaism, may take the oaths to the government, omitting the words upon the *true faith of a Christian*.

**JOINT-TENANTS** are such as hold lands or tenements jointly by one title, and who *must* jointly plead, and be jointly sued. They are distinguished from tenants in common by the latter holding by several titles, or by one title, and by several rights.

**JOINTURE** is defined, by Sir Edward Coke, a provision for the wife to take effect in profit or possession after the death of the husband, and continue for her life, at least. If a jointure be made to a woman after marriage, she may, after the husband's death, either accept it or claim her dower at common law; for she was not capable of consenting to it during coverture. A

jointure is not forfeited by the adultery of the wife as dower is, and a court of equity will decree against the husband a performance of marriage articles, though he allege and prove that his wife lives separate from him, in adultery.

**JOURNEYMAN**, from the French *journée*, is, strictly, one who works by the day, but it is now applied to all workmen, not being masters.

**JOURNIES ACCOUNTS** is a term in law thus understood: if a writ abate by the death of the plaintiff or defendant, or by any defect of form, the surviving party shall have a new writ within as little time as he possibly can after the abatement of the first; and this is called having a writ by *journies accounts*, the second writ being a continuance of the cause as if the first had not abated.

**JUDGER**. In Cheshire, to be a judger of a town is to serve on a jury there.

**JUDGES**. Since the revolution of 1688, several regulations have been made to secure more effectually the independence of the judges of the superior courts. By 13 W. III. c. 2, it is enacted, that their commissions shall not, as formerly, be made *during pleasure*, but during good behaviour; that their salaries shall be ascertained and fixed, but that they may be removable on an address of both houses of parliament. And, by the 1 Geo. III. c. 23, their commissions were made permanent, notwithstanding a demise of the Crown. Lastly, in the session of 1825, acts were passed to abolish the sale of offices in the Courts of King's Bench and Common Pleas, and substitute fixed salaries and retiring pensions in lieu of this privilege.

**JURATS**, a sort of aldermen, for the government of many corporations.

**JUSTIFYING BAIL**. If a man be arrested and puts in bail, the plaintiff's attorney may except against the bail, as being, in his opinion, insufficient. In such case, the bail (or other bail in their place) must *justify* themselves in Court, or before a commissioner in the country, by swearing themselves house-keepers, and each of them to be worth double the sum for which they are bail, *after payment* of all their debts. But if the sum exceed 1000*l*.

teach is only required to justify himself in 1000*l.* more than that sum.

In the *King's Bench*, bail are added and justified before one of the judges, sitting in the bail court, by virtue of 59 Geo. III. c. 11. The bail must be in Westminster-hall by half-past nine in the morning; and if the bail are not ready, and the paper delivered to counsel, before ten o'clock, they cannot be taken after that hour, *Rul. H. & T. 59 Geo. III. K. B.*

In the *Common Pleas*, the bail must justify at the sitting of the Court only, except on the last day of term, when bail, who may have been prevented from attending at the sitting of the Court, shall be permitted to justify at the rising of the Court.

In the *Exchequer*, the junior baron attends in Court alone, a few minutes before ten o'clock every morning during term, and it is expected justification of bail be then made, and no justification of bail can take place after half-past ten o'clock.

Justs were martial exercises with spears, on horse-back, and differed from *tournaments* in that the latter were by troops and squadrons, whereas justs were usually between two combatants only.

## K

KEELMEN are seamen and others employed in the coal-trade in the north of England.

KEEP, a strong tower or defence, in the middle of a castle or fortification, something of the nature of a citadel.

KING'S BOOK. By the 26 Hen. VIII. c. 3, it is enacted that commissioners shall be appointed in every diocese to certify the value of every ecclesiastical benefice and preferment; and, according to this valuation, the first-fruits and tenths were, in future, to be collected and paid. This *vulor ecclesiasticus* is what is called the "*King's Book*;" a transcript of which is given in Ecton's *Thesaurus* and Bacon's *Liber Regis*. But the whole of this singular document has been recently printed, by the commissioners appointed to examine into the state of the public records, and a copy, in four volumes, folio, is deposited in the London Institution.

**KNAVE.** It is curious to remark the successive variations of this old Saxon word from its original, *enapta*. At first, it signified a boy as distinguished from a girl: it is thus used in Wickliffe's translation, *Exod.* i. 16, if it be a *knave child*, that is a son or male child. Afterwards, it was taken for a servant boy; as in the Vision of Pier's Plowman, it is said "*cokes and her knaves*," that is cooks and her boys, or scullions. It was next applied to any servant man; also, for an officer or dependent that bore the weapon or shield of his superior. It is now used in a degrading sense, and applied to a false and deceitful fellow.

**KNIGHT.** Some recent interpretations show that *knight* and *miles* have no reference at all to a horse. *Knight* or *cnicht*, is a boy or youth, and Mr. Turner, in a chapter on the Anglo Saxon chivalry, traces the word from its primitive meaning up to its present, through the gradation of boy, servant, military attendant, sword-bearer, &c. The use of the *miles* is clearly referable to that period in the military history of the middle ages when the infantry, being a miserable ill-armed force, the wealthier and nobler classes, who fought well-armed on horseback, were the only troops taken any account of, and thought worthy of the denomination of soldiers. The right to confer knighthood was not originally a prerogative of royalty, nor the order a part of the municipal constitution of any state, but a military, and, in some sense, a religious institution pervading all Christendom; and the order might be conferred by any man, who was himself a knight, whether in his own, or in a foreign country. And, accordingly, to this day, a foreign knight is a knight in England, by our law, though a foreign duke, &c. is only an esquire.

## L

**LABOUR.** According to Political Economists, labour is the only source of wealth, and the value of every commodity depends on the quantity of labour expended in its production. Blackstone, too, considers it the most legitimate foundation of property, and says, that "labour bestowed upon any subject, which before lay com-

mon to all men, and subject to first occupancy, is universally allowed to give the fairest and most reasonable title to an exclusive property therein."

**LACHES** signify, in law, slackness or negligence.

**LAITY** is that portion of a community separate from the clergy.

**LAMMAS-DAY**, the first day of August, on which day the tenants that held land of the cathedral church of York were bound by their tenure to bring a live lamb into the church at high mass.

**LAND-TAX** is a territorial impost, anciently levied under the name of scutage, hydagc, and talliage. It was introduced in its present form in the reign of Will. III. when a new assessment or valuation of estates was made throughout the kingdom; which, though by no means a fair one, had the effect of raising a supply of 500,000*l.* by an assessment of 1*s.* in the pound on the value of the estates given in. The method of raising it is by charging a particular sum on each county, according to the valuation of 1692, and this sum is assessed and raised on individuals by commissioners appointed in the act, being the principal landholders in the county, and their officers. Up to the year 1798, the land-tax was an annual tax; at that period, with the view of supporting public credit, and augmenting the national resources, it was made perpetual. The last annual act was the 38 Geo. III. which imposed the tax for the year at the rate of 4*s.* in the pound; and it was made perpetual, at that rate, by a statute passed in the same year, the 38 Geo. III. c. 60, which has been modified and amended by several subsequent statutes. At the same time, the land-tax was made subject to *redemption* by the owner of the land on which it was laid, or, in default of his redeeming it, to purchase by any other person. The sums paid, in either case, are applied to the reduction of the national debt; and the price is regulated by the price of the funds at the time, being always so much stock in the 3 per Cent. Consols, or 3 per Cent. Reduced, as will yield a dividend exceeding the land-tax redeemed or purchased by one-tenth. By 46 Geo. III. c. 133, the commissioners may exonerate



small livings and charitable institutions, the income of which is under £150, from the land-tax, without any consideration, provided the annual amount in the whole does not exceed 600*q*l.

**LAW-MERCHANT** consists of certain usages, which have gradually grown into force in commercial transactions, and the validity of which has been so far allowed by the courts, for the benefit of trade, as to render them a part of the common or unwritten law of England. Such are laws relating to bills of exchange, mercantile contracts, and insurance, which, though claiming no higher authority than the custom of merchants, are as much the general law of the land as the laws relating to marriage or murder. It is not, however, every new practice or device among traders that becomes a part of the law-merchant; before it can become such, it must be sanctioned by long usage and judicial recognition.

**LEASE AND RELEASE** is a mode of conveying property in land to another. It was first practised by Sergeant Moore, soon after the Statute of Uses, and is thus performed. A lease, or, rather, a bargain and sale upon some pecuniary consideration, for one year, is made by the tenant of the freehold to the lessee or bargainee. Now, this, without any enrolment, makes the bargainor stand seised to the use of the bargainee, and vests in the bargainee the *use* of the land for a year: and then the statute immediately annexes the possession. He, therefore, being thus in possession, is capable of receiving a release of the freehold and reversion, which, by the statute, must be made to a tenant in possession: and, accordingly, the next day, a *release* is granted to him. A conveyance by lease and release amounts to a *scoffment*, and so supplies the place of livery of seisin.

**LECTURER.** In London and other places there are lecturers, chosen and paid by the principal inhabitants, who assist the rectors in their spiritual duties, and are usually the afternoon preachers. They must subscribe to the 39 Articles, and signify their assent to the Common Prayer; and, like other ministers, be admitted and licensed by the ordinary. In some cases, lectures are founded by the donations of pious persons, and the lec-

turer appointed by the founder, without the interposition of either rector or parishioners, though with the approbation of the bishop. But no lecturer is entitled to the *use* of the pulpit without the consent of the rector or vicar, in whom the freehold of the church is vested.

LETTERS. The receiver of a private letter has, at most, but a joint property with the writer, and the possession does not give him a license to publish it, 2 *Atk.* 342. And an injunction has been granted to restrain the printing of letters, without the consent of the executors of the person who wrote them, *Amb.* 737. This rule prevailed in the case of Hanson and Hobhouse, executors of Lord Byron v. Knight, 1825; although a strong presumption was shown that his lordship sent them, contemplating the probability that the person to whom they were sent would publish them.

LETTER MISSIVE, *for electing a Bishop*, is a letter from the king to the dean and chapter, enclosing the *name* of the person whom he would have them elect.

LETTER OF CREDIT is where a merchant or correspondent writes a letter to another, requesting him to credit the bearer with a sum of money therein specified.

LETTER OF LICENSE, an instrument in writing, given by creditors to a person, allowing him a longer time for the payment of his debts, and protecting him from arrest in going about his affairs.

LETTERS PATENT, or *open letters*, are writings sealed with the great seal of England, whereby the grantee is protected in the enjoyment of some discovery, privilege, or advantage.

LEVANT ET COUCHANT, applied to the cattle that have been so long in the ground of another that they have lain down, and risen again to feed.

LEVARI FACIAS, a writ of execution directed to the sheriff for levying a sum of money upon the goods and chattels of a defendant.

LIBRARY. The 7 Ann, c. 14, makes divers provisions for the preservation and regulation of such parish libraries as are bequeathed or established for the use of the poor clergy, whose incomes are so small they cannot afford to buy books. Incumbents are requested to give

security, and make catalogues of the books, and where a book is not returned, a justice's warrant may be obtained to search for and restore the same.

**LIEGES**; that is, dependents. *Liege-people* are the king's subjects, or the vassals of their superior.

**LIGHTERMEN**, persons employed in the carrying of goods to and from ships, in barges or lighters, on the river Thames.

**LINEAL ANCESTOR** is a father or grandfather in a right line. It is curious to remark the number of ancestors which every man has, within no very great number of degrees; and so many different bloods is a man said to have in his veins as he has lineal ancestors. Thus, if he have two in the first ascending degree, his own parents; he has four in the second, the parents of his father and the parents of his mother; he has eight in the third, the parents of his two grandfathers and two grandmothers; and, by the same rule of progression, he has a hundred and twenty-eight in the seventh; a thousand and twenty-four in the tenth; and at the twentieth degree, or the distance of twenty generations, every man has above a million of ancestors, as the following geometric series will exemplify:

LINEAL DEGREES.	NUMBER OF ANCESTORS.
1 .....	2
2 .....	4
3 .....	8
4 .....	16
5 .....	32
6 .....	64
7 .....	128
8 .....	256
9 .....	512
10 .....	1024
11 .....	2048
12 .....	4096
13 .....	8192
14 .....	16384
15 .....	32768
16 .....	65536
17 .....	131072

18	.....\.....	262144
19	.....	524288
20	.....	1048576

*Collateral kindred*, which descend from two branches instead of one, increase at a much faster rate; for these increase in a quadruple instead of a duplicate ratio; so that, at the fifteenth remove, a man will have nearly 270 millions of collateral relations.

**LINEN.** By 28 Hen. VIII. c. 4, the contents of every piece of dowlas and lockeam shall be set upon the cloth on pain of forfeiture. And, by a statute of Eliz. linen deceitfully stretched or used shall be forfeited, the offender imprisoned a month, and fined at the discretion of the justices. By 34 Geo. III. c. 23, the proprietor of any original pattern for printing linen shall have the sole right of printing it for three months from first publication: but any person purchasing plates from the proprietor may print therefrom.

**LIVERY.** 1. It is used for a suit of clothes, as a cloak or gown, which a nobleman or gentleman gives to his servants or followers, mentioned in 1 *Rich.* II. c. 7, and other statutes. 2. Livery signifies delivery, as *livery of seisin* is a delivery of possession of lands and tenements to one that has a title to them.—See *Feoffment*.

**LIVERYMEN.** These are a numerous and respectable body of the city of London, chosen from among the freemen of the different incorporated companies. They are compelled to hold the office without some reasonable excuse to the contrary, and, on refusal to serve, may be fined, and action of debt brought for the recovery of the penalty: but they cannot be imprisoned, 1 *Mod. Rep.* 10. By 11 Geo. I. c. 18, liverymen who have been twelve months on the livery are entitled to vote for members of parliament, and, by charter, for the election of the lord-mayor, chamberlain, sheriffs, &c.

**LONGITUDE AT SEA.** By 58 Geo. III. c. 20, amended by 1 & 2 Geo. IV. c. 2, commissioners are appointed to establish three scales of proportionate rewards, to be paid to persons who shall, by any principle, not already made public, ascertain the longitude within three corresponding scales of limit and condition,—such rewards

not exceeding 5000*l.* 7500*l.* and 10,000*l.* and if, on reasonable experiment, to be certified by the commissioners, it shall be found the longitude has been so ascertained, they may then pay the proportionate reward assigned to the scale. The commissioners may also expend 1000*l.* in making and publishing experiments for the improvement of navigation.

**LUXURY.** There were formerly various laws to restrain excess in apparel, which are repealed by 1 Jac. c. 125.

## M

**MADHOUSES.** The abuses to which *private* madhouses are liable gave rise to the 26 Geo. III. c. 91 ; by which they are subjected to occasional inspection, and any one is prohibited keeping such house without a license. This license for London, Westminster, seven miles from the same, and the county of Middlesex, is granted by commissioners, appointed by the College of Physicians ; in the country, by justices at quarter sessions. These commissioners, in one case, and two delegated justices with a physician, in the other, are to inspect the houses from time to time, to make minutes of what they see, and transmit reports to the College of Physicians. The license is granted under a recognizance for good behaviour, and is in force for one year only. No person can confine more than one lunatic without an annual license from the College of Physicians, or the justices in session, under a penalty of 500*l.* And the keeper of a licensed house receiving any person as a lunatic without a certificate from a physician, surgeon, or an apothecary, that he is such, forfeits 500*l.* The custody of pauper lunatics is regulated by 48, 51, 55, & 59, Geo. III.

**MAIDEN ASSIZE.** When no person is condemned to die at a circuit town, it is called a *maiden assize*.

**MAINOUR,** the goods or articles stolen by a thief, and found in his possession.

**MAINPRISE** is the delivery of a person into friendly custody, upon security that he shall be forthcoming at the time and place assigned ; it differs from *bail* in that a person bailed is not supposed to be at large, but in the ward or actual keeping of his sureties.

**MAIA IN SE** are acts unlawful and bad in themselves : as theft, murder, perjury, and the like.

**MALT DUTIES.** The laws on this subject are consolidated and amended by an act of last session the 7 & 8 Geo. IV. c. 52, which came into operation October 10th, 1827. The provisions of the act are too numerous to recapitulate, and could only be intelligible to those engaged in the malting business.

**MAN.** See *Isle of Man*.

**MANDAMUS**, a writ of, is, in general, a command issuing in the king's name, from the Court of King's Bench, and directed to any person, corporation, or inferior court, requiring them to do some specified act, which appertains to their office and duty. It is a high prerogative writ, of a most extensive remedial nature, and issues in all cases where a party has a right to have any thing done, and has no other legal means of compelling its performance. A mandamus lies to compel the admission or restoration of the party applying to any office or franchise of a public nature, whether spiritual or temporal ; to academical decrees, to the use of a meeting-house, &c. It lies for the production, inspection, and delivery of public books and papers ; for the surrender of the regalia of a corporation ; to oblige bodies corporate to affix their common seal ; to compel the holding of a court ; and for an infinite number of other purposes.

As the writ of mandamus is exclusively confined to the Court of King's Bench, and has been called one of the *flowers* of that Court, no writ of error will lie to any other jurisdiction, if there should be any thing improper either in the granting of it or in the proceedings under it.

It has been said above that a mandamus does not lie unless the party has no other specific legal remedy. Thus, it does not lie to the Governor of the Bank of England to transfer stock, because the party has his remedy by *assumpsit* ; nor to insert certain persons in a poor's rate, though the omission is alleged to have been to prevent their having votes for members of parliament. The Court will not award a mandamus for licensing a public-house ; nor compel admission to the degree of a bar-

risters; nor to compel any of the inns of court to admit a person as student, or to assign reasons for refusing to admit him, *Wooler v. Society of Lincoln's Inn*, *K. B. Mich. T. 1825.* . Nor for a fellow of a college, where there is a visitor; nor to the College of Physicians, to examine a doctor of physic, who has been licensed, in order to his being admitted a fellow of the College; nor to restore a minister of an endowed dissenting meeting-house, for, if he has been regularly admitted, he has his remedy by action.

The mode of burying the dead is a matter of ecclesiastical cognizance; and, therefore, where the question was whether a parishioner had a right to be buried in a churchyard in an *iron coffin*, which was a new and unusual mode of interment, the Court refused to interfere.

**MANIFEST.** A statement of the name and tonnage of a ship, the name of the master, the amount and description of the cargo, and, in short, every particular connected with the voyage, and the parties interested therein. All British ships are required to have manifests on board, and no goods can be imported without such document, under a penalty of 100*l.*

**MANSE**, a habitation or farm. Also the residence of the parish priest, being the parsonage.

**MANSION**, The lord's chief dwelling-house within his fee; or otherwise called the capital messuage, or manor place.

**MANUFACTURES** are, strictly, such articles of utility as are produced by the *hand* only, but the term is applied to all commodities produced by the joint operation of machinery and manual labour. For the laws still in force relative to different branches of manufacture, see *Woollens, Cottons, Linen, &c.*

**MARCHES**, the boundaries or limits between two countries, as between England and Wales, or between England and Scotland. *Lords Marches* were those noblemen that lived on the marches of Wales or Scotland, who formerly had their peculiar laws, and exercised almost regal authority. They are abolished by 27 Hen. VIII. c. 26.

**MARCHET**, in the ancient British, *Gwarb Merched*, or

"maid's fee," is a composition of 10*s.* paid by the tenant, on the marriage of his daughter, to the lord, on condition of the latter waiving his claim to sleep the first night with the bride. The custom, with certain modifications, is observed in some parts of England and Scotland, and in the manor of Dinevor, in the county of Carmarthen.

**MARK**, an ancient coin ; the mark of silver was 13*s.* 4*d.*

**MARK TO GOODS** is what ascertains the property or quality thereof. If a person use the mark of another, with *intent* to injure him, and he sustain damage thereby, an action on the case lies.

**MARKET** is a lesser kind of fair, held by grant or prescription.—See *Fair*.

**MARQUE** and **REPRISAL**, *Letters of*, is now used for the commissions granted to individuals to fit out privateers in time of war to cruize against the enemy ; the owners giving security to the Admiralty not to infringe the rights of nations with whom the country is at peace. Prizes made without such commission do not become the property of the captors, but form *droits* of the Admiralty. These commissions may be vacated three ways ; by express revocation, the cessation of hostilities, or by the misconduct of the parties. In the case of the *Mariamne*, Sir W. Scott laid it down that cruelty works a forfeiture of letters of marque, 5 *Rob. Rep.* 9.

**MARRIAGE**. The marriage act now in force is the 4 Geo. IV. c. 76, which contains many regulations for the prevention of fraud, and to ensure a due solemnization of marriage.

*Publication of Banns*.—Banns of matrimony are to be published in the parish church, or in some public chapel belonging to the parish wherein the parties dwell, upon three Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service (if there be no morning service), immediately after the second lesson ; and, if the parties dwell in *separate* parishes, the banns must be published, in like manner, in their respective parishes. Notice of the names, places, and time of abode of the parties, are to be given to the minister, seven days before the



publication of banns. The 5 & 6 of Geo. IV. makes legal marriages solemnized in any other place than the parish church and chapel thereunto appertaining, to which the bishop of the diocese may have granted a *license* for the solemnization of marriages.

*Minors.*—Ministers are not punishable for marrying minors, without the consent of parents or guardians, after the publication of banns, unless they have notice of dissent: if dissent be publicly declared, the publication of banns is void.

*Re-publication* of banns is necessary, if marriage be not solemnized within three months after the first publication.

*Marriage by License.*—No license of marriage to be granted, except in the parish or chapelry wherein one of the parties has resided for the space of fifteen days immediately before the granting of such license. To prevent fraud and collusion in obtaining licenses, one of the parties must personally swear before the surrogate that he or she believes that there is no impediment of kindred or alliance, or of any other *lawful* cause to hinder the intended marriage; and that one of the parties has, for the space of fifteen days immediately preceding, had his or her usual place of abode within the parish or chapelry where such marriage is to be solemnized: and where either of the parties (not being a widow or widower) is under the age of *twenty-one* years, that the consent of the person or persons, whose consent to such marriage is required, has been obtained.

Unless the parties under age have been previously married, the parent or guardians are required to give consent to the marriage.

If marriages by license be not solemnized within three months, a new license must be obtained.

*Clandestine Marriages.*—If any person solemnize matrimony in any other place than where banns may be *lawfully* published, or at any other time than between the hours of eight and twelve in the forenoon (unless by special license); or solemnize matrimony without publication of banns, unless a license be first obtained; or if any person *falsely* pretending to be in holy orders

solemnize matrimony, every person *knowingly* so offending is guilty of FELONY, and may be transported for fourteen years. Such clandestine marriages are punishable at common law, independent of the statute, by fine and imprisonment.

*Marriages made Void.*—A marriage is void where persons *knowingly* and *wilfully* marry in any other place than a church or chapel, where banns may be lawfully published, unless by special license; or *knowingly* and *wilfully* to intermarry, without due publication of banns, or license from a person having authority to grant the same; or knowingly and wilfully consent to the solemnization of marriage by a person not being in holy orders. But in all other cases of fraud or false-swearing, or other irregularity, the *marriage itself is valid*, though the parties offending are liable to punishment, and a forfeiture of property. And the 23d section provides for the recovery of property, accruing from marriages by license *wrongfully* obtained, or without due publication of banns.

*Witnesses and Register.*—All marriages are to be solemnized before two or more credible witnesses, besides the minister; and immediately after an entry is to be made in the register book, in which must be expressed that the marriage was by *banns* or *license*; such entry to be signed by the minister, by the parties married, and attested by the witnesses. Persons convicted of making a false entry, or of forging any such entry, or of forging any license, or of destroying such register, to be *transported for life*.

*Jurisdiction of Marriage Act.*—The Marriage Act extends only to marriages in England. It does not extend to the royal family, nor to Quakers and Jews. Marriages on *elopements* to Gretna-Green, or other places in Scotland, seem to be valid if the consent of the parties be *fairly* and without *fraud* obtained, and the marriage solemnized according to the forms required by the law of Scotland.—Sir W. Scott's judgment on *Dalrymple v. Dalrymple*.

*Marriages abroad.*—Marriages of British subjects in foreign countries are valid, if made according to the laws of those countries, *Herbert v. Herbert*. And the *validity*

of all marriages solemnized by a minister of the established church, in the chapel or house of a British ambassador, or minister, or in the chapel of any British factory, or in the house of a British subject abroad; as also of marriages solemnized within the lines of a British army serving abroad, is fully secured by the 4 Geo. IV. c. 91. The prohibited degrees of marriage, under the 25 Hen. VIII. c. 22, and which makes the children of such marriage *illegitimate*, are the following: namely, a man may not marry his mother or step-mother; his sister; his son's or daughter's daughter; his father's daughter by his step-mother; his aunt; his uncle's wife; his son's wife; his brother's wife; his wife's daughter; his wife's son's daughter; his wife's daughter's daughter; his wife's sister.

**MARTIAL LAW** is the law of war, and that to which the military is subject; it is built upon no fixed principles, and, according to Sir Matthew Hale, is no law, but something rather indulged than legally established.

**MASTERS IN CHANCERY** are assistants to the Lord Chancellor, Vice-Chancellor, and Master of the Rolls: they are either *ordinary* or *extraordinary*; the masters in *ordinary* are twelve in number, some of which sit in Court every day during term, and have referred to them interlocutory orders for examining accounts, estimating damages, and the like: they also administer oaths, take affidavits, and acknowledgements of deeds and recognizances. The *extraordinary* masters are appointed to act in the country, and discharge similar duties in the several counties of England, ten miles from London.

**MATRICULA**, a register; hence, to be entered on the register of the universities is to be *matriculated* there.

**MAXIMS IN LAW.** What proverbs are in common life maxims are in law, and they hold the same authority in legal adjudications as acts of parliament. They form part of the general customs or common law of the land, and are determined by the judges. The maxims in the law-books are too numerous to be inserted; the following is a selection of the principal:—

New laws abrogate those preceding which are contrary to them.

He who desires the benefit ought to bear the charge, 1 *Co.* 99.

The king is greater than any single person, less than all, *Bract. Lib.* 1, c. 8.

The king is a mixed person, partaking of the priesthood as well as the laity, 5 *Co. Eccl. L.*

No one is bound to criminate himself.

No one can be witness in his own cause.

A prison is for safe custody, not for punishment, *Co. Lit.* 260.

He confirms an use who destroys an abuse, *Moor*, 764.

The consent, not the junction of the parties makes the marriage; and they cannot consent before marriageable years, 6 *Co.* 22.

A contract founded in evil, or against morality, is void, *Hob.* 167.

Conditions against law are void.

The appointment of judges is by the king; their jurisdiction by the law, 4 *Inst.* 74.

God only can make an heir, *Co. Lit.* 7.

Deceit is not purged by circuitry, *Bacon*.

Clandestine gifts are always suspicious, 3 *Co.* 81.

In cases of extreme necessity every thing is in common, *H. P. C.* 54.

In criminal cases the proof ought to be clear as daylight, 3 *Inst.* 210.

A judge ought always to look to equity, *Jenk. Cent.* 45.

A judge is the law speaking, 7 *Co.* 4.

Public rights are to be preferred to private, *Co. Lit.* 130.

Justice strengthens the throne, 2 *Inst.* 140.

Intent without act is not punishable.

The law speaks to all with the same mouth, 2 *Inst.* 184.

Long possession is the law of peace, *Co. Lit.* 6.

As corn comes from the ear, so a bastard comes by a mistress, *Co. Lit.* 224.

It is better to recede than to proceed badly, 4 *Inst.* 176.

The naming of one thing is the exclusion of another.

He who does a thing by the agency of another does it himself.

Malice is held equivalent to age.

Right cannot die, *Jenk. Cent.* 100.

The church is to be more favoured than the parson,  
*Godol. Rep. Can.* 172.

To refer errors to their principles is to refute them,  
**3 Inst.** 15.

Every man's deed shall be taken most strongly against himself.

He confesses his guilt who flies from judgment, **3 Inst.** 14.

It is fraud to conceal fraud, **1 Vern.** 240.

It is the same thing to say nothing and not to say sufficient, **2 Inst.** 178.

Ignorance of the fact excuses; but not ignorance of the law, **1 Co.** 177.

Ignorance is the greatest blemish in mechanics, **11 Co.** 54.

Impunity always invites to greater crimes, **5 Co.** 109.

Want of power excuses the law.

Everything may be annulled by the same means that made it.

Bad grammar does not vitiate a deed, **9 Co.** 48.

The law compels no one to do things useless or impossible.

What an *attempt* is the law has not defined, **6 Co.** 42.

It matters not what is known to the judge, if it be not known judicially, **3 Buls.** 115.

No simile is the same, *Co. Lit.* 3.

The best interpreter of a statute is the statute itself, **8 Co.** 117.

He is the father whom the nuptial shows to be such, *Co. Lit.* 123.

One eye-witness is better than ten ear ones, **4 Inst.** 279.

What necessity forces, it justifies, *H. H. P. C.* 54.

A strumpet is a sufficient witness to a fact committed in a brothel, *Moor.* 817.

Agreement over-rules the law, **2 Co.** 73.

A multitude of ignorant persons destroys the Court.

No one should fill two offices, **4 Inst.** 100.

Offences the most difficult to guard against ought to be most severely punished.

He who cannot pay in purse must pay in person, 2 *Inst.* 173.

Lastly, the title to an Englishman's liberties is older than the oldest title to any estate.

**EQUITABLE MAXIMS.**—The following are the maxims which are said to govern Courts of Equity:—

He that will have equity done to him must do it to the same person.

He that has committed iniquity shall not have equity.

Equality is equity, *Hob.* 224.

Equity suffers not a wrong to be without a remedy:

Relieves against accidents.

Prevents mischief.

Prevents multiplicity of acts.

*Regards length of time.*

Will not suffer a double satisfaction to be taken.

Suffers not advantages to be taken of a penalty or forfeiture, where compensation can be made.

It regards substance, not ceremony.

Where equity is equal the law must prevail.

A verdict at law is a bar to equity, 1 *Vern.* 176.

**MEDICAL JURISPRUDENCE** is defined a science by which medicine and its collateral branches are made subservient to the construction, elucidation, and administration of the laws, and to the preservation of the public health. It resolves itself into two great divisions, *Forensic Medicine*, comprehending the evidence and opinions necessary to be delivered in courts of justice; and into *Medical Police*, embracing the consideration of the policy and efficiency of legal enactments for the purpose of preserving the general health of the community. It is a science of the greatest importance to the just investigation of cases of poisoning, homicide, rape, abortion, lunacy, nuisances, and insurance of lives.

**MERCHANT** is one who buys or trades in commodities; but the term is usually restricted to those who deal wholesale or are engaged in foreign commerce. By the *New Jury Act*, 6 Geo. IV. c. 50, all persons entered on the Special Jurors' Book as "merchants" are eligible to serve on special juries.

**MESNE**, the law term for middle or intermediate. It

is applied two ways: *first*, to any incidental issue, pending a law suit, upon some collateral interlocutory matter, as to summon juries, witnesses, and the like. *Second*, mesne process is used in contradistinction to *final* process, or process of execution, and signifies all such process as intervenes between the beginning and end of a suit. To arrest on mesne process is to arrest in the middle of a suit before trial and judgment; and, by the 7 & 8 Geo. IV. c. 71, cannot now be made where the debt or cause of action is under 20*l*.

**MESSAGE**, a dwelling-house with land annexed for the use thereof.

**MEWS**, anciently the falconry, or place for keeping hawks; it is now applied, in London, to stabling for horses.

**MILITIA**. The statutes relative to the militia, amounting to upwards of seventeen, are too numerous to be here specified; the general points on the subject may be seen at page 183.

**MILLERS**. By 36 Geo. III. c. 85, scales are to be kept in every corn-mill, which may be examined by the persons appointed under 35 Geo. III. c. 102, on penalty of 20*s*. Millers are to weigh corn, if required, before and after ground, on pain of 40*s*. No coin but money shall be taken for toll, on pain of 5*l*. except where the party has no money. But this does not extend to ancient mills where a right to take toll has been established by custom or prescription. Millers are to put up in their mills a table of prices, on penalty of 20*s*. These acts do not extend to *private* mills.

**MISSAL**, the mass-book, containing the daily ritual of the mass.

**MITRE**, the episcopal crown. *Mitred abbots* were the heads of religious houses, who obtained the privilege of wearing the mitre, ring, gloves, and crosier of a bishop.

**MITIMUS**, a writ for the removal of records. It is also a precept, in writing, under the hand and seal of a magistrate, directed to the gaoler, for the receiving and safe custody of an offender till he is delivered by law.

**MONEY** is pieces of metal representing value, and

which derive authority to be current from the impress and command of the sovereign.—See *Gold* and *Silver*.

**MONSTER** is one born without the human shape: such cannot purchase or hold land; but a person may be heir to his ancestor, though deformed in some part of his body, *Co. Lit.* 7. A monster shown for money is a misdemeanor, 2 *Chan. Ca.* 110; *Trin.* 34; *Car.* 2, *Harring v. Walrond*. This was the case of a malformed child, which was embalmed to be kept for show, but was ordered by the Lord Chancellor to be buried within a week. What *constitutes* a monster is left by jurists vague and undetermined: there are few authenticated instances of monsters having long survived the period of their birth; and, perhaps, the safest criterion of monstrosity would be to exclude every production from that description which is capable of prolonged existence.

**MONTH**, a period of time, and is either *lunar* or *solar*; the *lunar* month contains four weeks, or twenty-eight days; the *solar* or *calendar* month contains thirty or thirty-one days. The month, by the common law, is the lunar month of twenty-eight days; and, in case of a condition for rent or enrolment of deeds, the month is computed at twenty-eight days, and generally in all cases where a statute speaks of months without specifying *calendar* months: but where a statute accounts by the year, half year, or quarter, then it is to be reckoned according to the calendar. A twelvemonth, in the *singular* number, includes the whole year, according to the calendar; but twelve months, six months, &c. in the *plural* number, include only so many months of twenty-eight days.—See *Year*.

**MOOT**, a term anciently applied to the fictitious arguing of cases, by which students in law were exercised and trained for the defence of clients. In the north of England, *Moot-hall* is a term still used for the building where sessions are held.

**MOSS-TROOPERS**, bands of free-booters who formerly infested the Borders, living by robbery and rapine.

**MOTION IN COURT**, an application to the Court, in order to obtain some rule or order necessary to the pro-



gress of a suit, and is usually grounded upon affidavit, made before a proper officer, to evince the truth of the facts upon which the motion is made.

**MUNICIPAL LAW** is that law which is not *local* or *temporary*, but the general, permanent, and uniform law of a country.

**MUNIMENT-HOUSE**, a small room or house of great strength, in castles, colleges, or cathedrals, for the safe-keeping of records, charters, and documents.

## N

**NATURALIZATION** can only be performed by act of parliament, for by this an alien is put in the same situation as a natural-born subject; except that he is incapable, as well as a denizen, of being a member of parliament or of the privy council. By 13 Geo. II. c. 3, *foreign* seamen who, in the time of war, serve two years on board an English ship, are naturalized; and all foreign Protestants and Jews, upon residing seven years in any of the American colonies, without being absent two months at one time; and all foreign Protestants, serving two years in a military capacity there, or being three years employed in the whale fishery, shall, upon taking certain oaths, be *naturalized*, except as to sitting in parliament or the privy council, or holding offices and grants from the Crown.

**NAVIGATION AND COMMERCE.** Within late years, material alterations have been made in the laws relating to foreign commerce and the shipping interests of the empire. Formerly, when the principles of public prosperity were but imperfectly understood, a desire of national aggrandizement dictated a selfish policy, which modern discoveries have shown to be unwise and destructive of the ends proposed. The most recent and important act on the new system is the 6 Geo. IV. c. 109, which determines the goods which shall be imported in British ships, or in ships of the country of which the goods are the produce. No goods shall be *exported* from the United Kingdom to any British possession, in Asia, Africa, or America, except in British ships. Neither can any goods be carried coastwise except in Bri-

tish ships. Nor can goods be *imported* into any British possession in Asia, Africa, or America, in any foreign ship, unless it be a ship of the country of which the goods are the produce. The 12th section requires that every British registered ship shall be navigated during the whole of her voyage, in every part of the world, by a master who is a British subject, and a crew, whereof, at least, *three-fourths* are British seamen; and if such ship be employed in a coasting voyage, or in a voyage between Guernsey, Jersey, Alderney, Sark, or Man, then the *whole* of the crew must be British seamen. Penalty for excess of foreign seamen, 10*l.* for each. Thus it appears from this statute that, though the *colonial* trade is thrown open to foreign nations upon the same principles as the trade with the mother country, yet the provisions of the old navigation laws, with respect to the coasting trade of the United Kingdom, and her trade with the colonies, are still in force.

**NAVY BILLS.** These are issued from the Navy-Office, to meet any exigency in that branch of public expenditure; and they bear interest after a certain date, if not discharged. They are made out at ninety days' date, and negotiated as bills of exchange.

**NE EXEAT REGNAM,** a writ to restrain a person from leaving the kingdom without the king's license. Where a suit is in equity for a demand for which the defendant cannot be arrested in an action at law, upon affidavit made that there is reason to apprehend he will leave the kingdom before the conclusion of the suit, the Lord Chancellor, upon a bill filed, will, by his writ, stop him, and commit him to prison, unless he produce sufficient sureties that he will abide the event of the suit.

**NEGLIGENCE OR FOLLY.** Where a man receives any hurt, either in his person or property, from the negligence or folly of another, the law gives a remedy by an action on the case, to recover damages for the injury sustained. As, where the defendant, by uncocking his gun, accidentally wounded the plaintiff, or where a person is bound to cleanse a ditch, suffers it to become so foul that his neighbour's land

land is overflowed ; for it is no defence in these cases for the defendant to allege the injury was involuntary on his part, 2 *Lev.* 172 ; since it is the duty of every one, not only to refrain from directly injuring his neighbour, but also to see he sustains no damage from culpable remissness. C. J. ABBOTT refused a shopkeeper, whose goods were stolen from *the door*, his expenses of prosecution ; observing that the law would never pay for the protection of property which the owner himself neglected to protect. *Old Bailey, April 10, 1827.*

NEGRO. By the law of the colonies, negro servants are saleable. But in England, a man cannot have a property in his fellow creature ; a negro, therefore, after his arrival in England, is immediately free. 11 *Str.* 340.

NEMINE CONTRADICENTE, words used to express the unanimous consent of either house of parliament to a vote or resolution.

NEXT OF KIN. The wife of a testator is not included in the meaning of the words " next of kin," for she is no relation to her husband in the sense in which that phrase is used, because it means kindred by blood only, and the wife is no relation by blood or affinity—*non affinis sed causa affinitatis* ; but in cases of intestacy, the widow is entitled to a distributive share.

NIGER LIBER. The *Black Book*, or register in the Exchequer, is called by that name. Several chartularies of abbeys, cathedrals, &c. are distinguished by a similar appellation.

NIGHT, *in law*, is the interval between sun-set and sun-rise, when it is so dark that the countenance of a man cannot be clearly discerned.

NIHIL, or NIL DICIT, is a failing by the defendant to put in an answer to the plaintiff by the day assigned, which being omitted, judgment is had against him of course, as saying nothing why it should not.

NISI PRIUS, one of the five commissions to justices of assize, whereby they are empowered to try issues of fact with the intervention of a jury. Before the judges regularly went circuits, all causes were triable at Westminster during the four great festivals or terms of each

year, and writs of *distringas* were directed to the sheriffs of counties, commanding them to distrain the empannelled juries to appear at a certain day at Westminster, to try the causes issuing out of each county; *except before* that day the judges should come to hold an assize. It is from this saving clause in the writ the term is derived, the language of the writ to the sheriffs running *nisi prius* justici domini regis ad assisas capiendi venerint; that is, “*unless before* the judges come to hold assizes” in the county.

**NOBLE**, an ancient coin, used in the reign of Edward III. of 6s. 8d. value.

**NOLLE PROSEQUI** is where a plaintiff declines proceeding further in his action, and may be *before* or *after* a verdict, though it is usually *before*, and is then stronger against the plaintiff than a nonsuit, which is only a default in appearance; but this is a voluntary acknowledgement that he has no cause of action.

**NON EST INVENTUS**, the sheriff's return to a writ, when the defendant is not to be found in his bailiwick.

**NORTHERN PASSAGE.** By the 58 Geo. III. c. 20, if any ship or vessel shall first find out and sail through any passage by sea, between the Atlantic and Pacific oceans, in any direction or parallel of the northern hemisphere, the owner of such ship, if belonging to any of His Majesty's subjects, or the commander, officer, seamen, and marines, if belonging to His Majesty, shall receive a reward, for such discovery, of 20,000*l.*; and if any ship shall approach within one degree of the pole, the owner of such ship, or commander, &c. shall receive a reward of 5000*l.* By the same act, amended by 1 & 2 Geo. IV. c. 2, proportional rewards may be granted for the attainment of certain degrees of the northern passage or approach.

**NOTARY-PUBLIC** is a person who attests deeds or writings, to make them authentic in another country; but whose chief business is in noting and protesting bills of exchange. By 41 Geo. III. c. 79, no person shall act as a public notary unless duly admitted: penalty 50*l.* If any notary shall act or permit his name to be used for the profit of any person, not entitled to act as a no-

tary, he shall be struck off the roll, on application to the Court of Faculties.

**NUDE CONTRACT** (*nudum pactum*), is a bare naked contract without consideration. Thus, if one buy of me a house, or other thing, for money, and no money be paid, nor earnest given, nor day set for payment, nor the thing delivered, here no action lies for the money or thing sold, but the owner may sell it to another if he please; such *nuda pacta* being void in law and of no effect.

## O

**OATH** is a solemn appeal to Almighty God, as a witness of the truth of what we affirm or deny, in the presence of those who are duly authorized to administer the same; and, in taking it, the party, as a symbol of his belief in the existence of a Supreme Being, whom he attests, is required to lay his hands on and kiss the Holy Scriptures.

By 7 & 8 W. III. c. 34, the affirmation of a Quaker is admitted in *civil*, but not in *criminal* cases. Nor can such affirmation be administered to them as jurors. It is only oaths administered in a civil or criminal suit, in a court of justice having power to administer an oath, or before some magistrate or officer invested, by statute, with similar authority, that the law takes cognizance of; and, consequently, all voluntary affidavits in *extra judicial* matters (as, for example, the affidavit of a quack of the efficacy of his nostrums, or of a brewer, that his beer is made only of malt and hops,) which are sometimes improperly admitted by magistrates, are not liable to the penalties of perjury. Where, too, an oath is required by act of parliament, but not in judicial process, the breach of it Professor Christian considers not to amount to *perjury*, unless the statute enact that such oath, when false, shall be perjury, or shall subject the offender to the penalties of perjury. The House of Commons has no power to administer an oath, except in those particular instances in which that power is granted by express act of parliament.

**OFFICE.** By 5 & 6 Edw. VI. c. 16, no public office (a few only excepted) shall be sold, under pain of disabi-

lity to dispose of or hold it; for the law presumes that he who *buys* an office will, by bribery, extortion, or other unlawful means to reimburse himself, make it detrimental to the community. By the 49 Geo. III. c. 12, the statute of Edward is extended to Scotland and Ireland, and to all offices in the gift of the Crown, or of any office appointed by the Crown. Persons buying or selling offices, or securing or paying money for soliciting offices, or entering into any negotiation relating thereto, shall be guilty of a misdemeanor. Advertizing the names of brokers or agents for the sale of offices subjects to a penalty of 50*l.* with full costs to the informer. Officers in the army giving more than the regulated prices for commissions, or paying agents for negotiating them, forfeit their commissions and be cashiered. The act does not extend to offices excepted in former acts; nor to lawful deputations, where the payment of the principal or deputy is out of the fees.

**OLERON LAWS** are the laws of Richard I. relating to maritime affairs, so called because made in the island of Oleron, in the bay of Aquitain.

**ONUS PROBANDI**, that is, the burden of proving.

**ORDER** is a term applied to those summary awards which justices of peace, by various statutes, are empowered to make in a great variety of cases that come before them; such as for the maintenance of bastards, to parish officers for the relief of paupers, to pawnbrokers refusing to deliver up pledges. It is less formal and precise than a **CONVICTION**; if an order be substantially right it is sufficient; but in a conviction certainty to the greatest degree of technical precision is requisite.

**OVERT ACT**, an open act, capable of legal proof.

**OUTLAWRY** is a punishment inflicted for contempt, and subjects the party to forfeiture and disabilities. The law, however, distinguishes between outlawries in *capital* cases and those of an *inferior* nature; in the former, the law interprets the absence of the party as sufficient evidence of guilt, on which forfeiture and corruption of blood ensue, without further proof; but in outlawry in

*personal actions*, the party is not looked upon as guilty of the fact, though he be liable to be restrained of his liberty, and forfeit his goods and chattels and the profits of his land. In the latter, too, it may be reversed by the defendant appearing personally in Court; and in the King's Bench without personal appearance, so that he appear by attorney, according to the 4 & 5 W. & M. c. 18.

OWLING is so called from being carried on in the night, and is the offence of transporting *wool* or *sheep* out of the kingdom, to the supposed detriment of its staple manufacture. Penalties for owling are abolished by 5 Geo. IV. c. 47.

ORIGINAL, or *original writ*, is the commencement or foundation of a suit in the superior courts at Westminster.—See page 32.

OYER and TERMINER, from the French *ouir* and *terminer*, to hear and determine. It is the first and largest of the five commissions by which the judges of assize sit in their several circuits, and empowers them to hear and determine treasons, felonies, and trespasses. In case of any sudden insurrection, riot, or general outrage, which requires prompt investigation and punishment, a *special* commission of oyer and terminer to try particular persons and offences is granted.

O YES, from the French *oyez*, “hear ye,” is the old proclamation to enjoin silence and attention.

## P

PACK OF WOOL, a horse load of 240 pounds weight.

PAINS AND PENALTIES, *bill of*, is an act of parliament to attain any one of treason, or felony, or to inflict pains and penalties beyond or contrary to the law then in force. Thus, the 9 Geo. I. c. 16, inflicted pains and penalties on the Bishop of Rochester, Kelly, and others, for being concerned in Laver's conspiracy, and they were condemned by parliament without such evidence as is required in the common law courts. Bills of pains and penalties are seldom resorted to; they are an *ex post facto* law, made *pro re nata*, and properly considered

inconsistent with the principles of justice. The last attempt to pass a bill of this kind was that in 1820, instituted against the Queen of Geo. IV.

**PALLIO COOPERIRE**, is an ancient custom, mentioned by Cowel, when children were born out of wedlock, and their parents afterwards intermarried, that those children, together with the father and mother, stood under a cloth extended, while the marriage was solemnizing, which was in the nature of adoption; and by such custom, the children were taken to be legitimate: but such children were never legitimate in this country at common law, though the clergy wanted to have a law made to render them legitimate.

**PANEL**, a slip of parchment, containing the names of such jurors as the sheriff returns to serve on trials.

**PARAPHERNALIA** are the goods which a wife claims above her dower or jointure, after her husband's death; as furniture for her chamber, wearing apparel, and jewels: which are not to be put into the inventory of her husband.

**PARENT** is either father or mother, but generally applied to the former.

**PARISH CLERKS**. The general nature of these is explained at p. 90, it only remains to notice the constitution of those within the Bills of Mortality, who were originally incorporated in 1232, for the purpose of cultivating church music. They were, also, great performers of the mysteries, or scriptural dramas, so common during the papal times. At the Reformation they were dissolved and their hall and altar demolished.

In 1611, they were re-incorporated by James I. under the name of "the Master, Wardens, and Fellowship of Parish Church Clerks of the City and Suburbs of London and the Liberties thereof, the City of Westminster, the Borough of Southwark, and the fifteen out-parishes adjacent," and several valuable privileges conferred on them. In return for these, the duty of making up the *Bills of Mortality* was imposed upon them, every clerk being bound to make a weekly report of christenings and burials which happen in the course of each week, accompanied with such information as he can collect,



with respect to the ages, diseases, and other circumstances of the persons dying. From these parochial returns, the clerk of the company makes up a general return, copies of which are sent to the different public authorities, for which purpose the company are authorised, by their charter, to keep a printing-press and printer of their own.

**PARISHIONER** is an inhabitant of, or belonging to, any parish, lawfully settled therein; and those who rent lands or tenements within a parish, though not *actually inhabitant* or resident therein, are, for the purpose of all parochial charges and burdens, considered to be parishioners. Parishioners paying scot and lot are, of common right, entitled to be admitted into a general vestry, and to give their vote, *Raym.* 1368. So, also, *out-dwellers*, occupying land in the parish, have a right to vote in the vestry as well as the inhabitants. 4 *Burn's Eccl. Law.* 7.

**PARISH REGISTER**, a book wherein baptisms, marriages, and burials are registered, in each parish, every year. It was instituted in the 13 Henry VIII. it must be subscribed by the minister and churchwardens, and the names of the persons registered be transmitted yearly to the bishop. It has been decided, *Burn's Eccl. Law*, 6 *Edit.* v. 3. p. 293, that parish registers are open to all persons for inspection and making extracts, on proper cause being assigned, and that this inspection may be demanded, but that the rector or curate cannot be obliged to make copies of these books or a certificate. But the 48 Geo. III. requires a marriage certificate to be given on stamped paper, value 5s.

**PARK**. It is not every field or common which a gentleman pleases to surround with a wall or paling, and to stock with a herd of deer, that is thereby made a *legal park*; for the king's grant, or at least immemorial prescription, is necessary to such purpose. To constitute a park three things are requisite—1. A grant thereof. 2. Enclosure by pale, wall, or hedge. 3. Beasts of a park, such as the buck, doe, &c. And when all the deer are destroyed, it shall no more be accounted a park; for a park consists of vert, venison, and enclo-

sure ; and if it is determined in any of them, it is a total disparking. *Cro. Car.* 59, 60.

**PAROL.** Word of mouth. *Parol contracts* are all contracts not under seal.—See page 235.

**PAYMENT OF MONEY INTO COURT** to the proper officer, with the costs incurred, is an admission of the *right* of action. This may be done upon motion for leave to pay the money into Court. If, after the money paid in, the plaintiff proceed in his suit, it is at his own peril : for, if he do not prove *more* due than is so paid into Court, he shall be nonsuited, and pay the defendant costs ; but he shall still have the money so paid in, for that the defendant has acknowledged to be his due. So, if a defendant plead a set-off, he must pay the remaining balance into Court.

**PECULIAR**, a parish or church that has a special jurisdiction within itself to grant administration or probate of wills, &c. exempt from the ordinary.

**PEERS** are persons of the same rank or degree. The right of every one to be tried by a jury of his peers, or equals, is considered the chief bulwark of the liberties of Englishmen.

**PEERS OF THE REALM** are the hereditary counsellors of the Crown. They are created by *writ* or *patent*, and form the Upper House of the Imperial Parliament. A *Scotch peer*, though not one of those sitting in parliament, is privileged from arrest, as appears from the singular case of Lord Mordington, *Fortescue's Rep.* 165. This lord, who was a Scotch peer, but not one of those who sat in parliament, being arrested, moved the Court of Common Pleas to be discharged, as being entitled, by the Act of Union, to all the privileges of a peer of Great Britain ; and prayed an attachment against the bailiff ; when a rule was made to show cause. Upon this, the bailiff made an affidavit that, when he arrested the said lord, he was so mean in his apparel, as having a worn-out suit of clothes, and a dirty shirt on, and but sixteen pence in his pocket, he could not suppose him to be a peer of Great Britain, and, therefore, through inadvertency, arrested him. The Court discharged the lord, and made the bailiff ask pardon.

**PEINE FORTE ET DURE**, the punishment anciently inflicted on those who stood mute, or refused to plead when put upon trial. In this case, the prisoner was conducted to a low dark chamber, laid on his back, naked, on the bare floor; as great a weight of iron as he could bear was next placed upon him, and in this situation he was fed with bread and water till he died, or submitted to answer. It appears, by a record of 31 Edward III. that the prisoner might then possibly subsist forty days under this lingering punishment. By standing mute, and suffering accordingly, the judgment, and, of course, corruption of blood and escheat of lands, were by the ancient law avoided. But by 7 & 8 Geo. IV. c. 28, if any person arraigned of any crime stand mute, or will not answer directly to the charge against him, the Court may order a plea of "Not Guilty" to be entered, when the trial may proceed as if they had actually pleaded. Mr. Christian mentions an affecting story of a father who, in a fit of jealousy, killed his wife and all his children who were at home, by throwing them from the battlements of his castle, and, proceeding towards a farm-house at some distance, with intent to destroy his only remaining child, an infant there at nurse, was intercepted by a storm of thunder and lightening. This awakened in his breast the compunctions of conscience, he desisted from his purpose, surrendered himself to justice, and in order to secure his estate to his child, had the resolution to die under the *peine forte et dure*.

**PENANCE** is an ecclesiastical punishment, in which the penitent makes satisfaction to the Church for the scandal he has given by his evil example. In the case of incontinence or incest, the sinner is usually enjoined to do public penance in the parish-church or market-place, bare-headed and bare-legged, in a white sheet, and to make an open confession of his crime, in a prescribed form of words. In smaller matters, satisfaction is to be made before the minister and churchwardens, or some of the parishioners, respect being had to the nature of the offence. *Penance* may be commuted for a sum of money to be applied to pious uses.

**PENITENTIARY HOUSES.** These were instituted by 19 Geo. III. c. 7, and intended for the *moral* reform, as well as *punishment*, of delinquents. In forming the plan of penitentiaries, the principal objects have been, by sobriety, cleanliness, and medical assistance, by a regular series of labour, by solitary confinement during the intervals of work, and, by religious instruction, to preserve and amend the health of the unhappy offenders; to inure them to habits of industry, to guard them from pernicious company, to accustom them to reflection, and to teach them the principles and practice of every moral and social duty. But it was not till 1816, a national penitentiary was built, on a large scale, at Millbank, which, in the early part of 1823, contained nearly 900 prisoners. About that time, a very alarming sickness made its appearance among them; the prison was temporarily evacuated, and, though now in a state to receive convicts, it may naturally be supposed that such an event was a material derangement and interruption to the plans there pursued for the reformation of offenders. Sufficient time has not elapsed to afford the system a fair trial; but it may be fairly said that, so far as the present evidence of experience goes, there is nothing to destroy the reasonable hopes of its advocates. The acts which more particularly regulate these penitentiaries are the 56 Geo. III. c. 63, and 59 Geo. III. c. 136. And the 7 & 8 Geo. IV. c. 33, makes further regulations for the government of the Milbank Penitentiary, by augmenting the powers of the committee, with respect to the removal and punishment of refractory convicts.

**PERAMBULATION OF PARISHES** is a going over and survey of the boundaries of parishes by the minister, churchwardens, and parishioners, once a year, in, or about Ascension Week. In this perambulation, the parishioners may justify going over any man's land, according to usage, and, it is said, may abate all nuisances in their progress.

**PERJURY.**—See *Oath*.

**PERMIT**, a license granted to remove goods liable to the excise or custom duties. By 11 Geo. I. c. 30, no person shall receive any permit for the removal of brandy, arrack, rum, spirits, and strong waters; coffee,

tea, and cocoa-nuts, without the special direction, *in writing*, of the person, or his servant, out of whose stock the same is to be removed: penalty 50*l.* or three months' imprisonment. Persons taking out a permit, and not removing goods within the prescribed period, nor returning the permit to the officer, forfeit treble the value of the goods mentioned in such permit. By 57 Geo. III. c. 123, persons selling, lending, or making use of a permit for any other purpose than that for which it was granted, forfeit 500*l.* By 6 Geo. IV. c. 81, s. 116, if any retailer of spirits send out more than *one gallon* without a lawful permit; or if any rectifier, or compounder, or dealer, shall receive into his stock any spirits without a permit; or if any carrier, boatman, or other person, shall assist to remove or transport any spirits without a permit; every person so offending shall forfeit 200*l.* over and above every other penalty, together with all such spirits: packages, carts, and horses, shall be forfeited, and may and *shall* be seized by any officer of excise.

**PERSONAL ACTIONS** are such whereby a man claims something due to himself, personally, or where he claims satisfaction, in damages, for some injury to his person or property.

**PETER-PENCE**, an obsolete claim of the Church of Rome of a penny from each house.

**PETIT SERGEANTY**, a mode of tenure which is defined by Lyttleton to consist in holding lands of the king by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like. The tenure by which the grants to the Duke of Marlborough and the Duke of Wellington, for their military services, are held are of this kind, each rendering a small flag, or ensign, annually, which is deposited in Windsor-Castle.

**PIGEON-HOUSE**. Formerly, none but the lord of the manor, or the parson, might erect a pigeon-house; and now it seems this privilege can only be *lawfully* exercised by a freeholder, who may build a pigeon-house on his own ground, 5 *Rep.* 104.

**PILLORY**. By the 56 Geo. III. c. 138, the punishment of the pillory is abolished, except in cases of

perjury and subornation of perjury. By some inadvertency, however, the punishment is continued in a subsequent statute, the 57 Geo. III. c. 12.

PILOTS are persons appointed to navigate and conduct ships, within certain limits of the coast, and inward and outward of the harbours and ports of the kingdom. They are mostly examined, licensed, and regulated by the corporation of the Trinity-House, the lord warden of the Cinque Ports, and the Trinity-Houses of Hull and Newcastle, under the provisions of the 6 Geo. IV. c. 125, which is the *General Pilot Act*.

PLANTATION, or COLONY, is a place where people are sent to reside; or to which a company of people voluntarily emigrate under the sanction of government. The British plantations are chiefly those in North America, New South Wales, on the coast of Africa, and the West-India Islands. They may be divided into two classes: one of which is governed by the Crown, without the intervention of local legislative assemblies; the other has councils and legislative assemblies framed on the model of those of the parent state. Of the latter description are most of the islands in the West Indies. They have a governor named by the king; courts of justice, from whose decision an appeal lies to England; and legislative assemblies, who, with the concurrence of the governor, make laws suited to their own emergencies. In settlements acquired by conquest, the laws and customs by which the people were governed before the conquest bind them until new laws are given; but, in an uninhabited country, newly discovered by English subjects, the English laws are in immediate force there, 2 *Salk.* 411, 3 *Mod.* 159.

PLAYS. By 10 Geo. II. c. 28, persons acting plays in any place where they have not a legal settlement, for hire, gain, or reward, without lawful authority or license from the Lord Chamberlain, shall be deemed rogues and vagabonds; and, whether they have a settlement or not, they are to forfeit 50*l.* but if they pay that sum, they are discharged of the other penalties. No *new plays*, or *additions* to old ones, shall be acted, unless a copy thereof be sent to the Lord Chamberlain fourteen days before. The Lord Chamberlain may prohibit the acting any

play or part thereof; and persons acting the same before such copy be sent, or contrary to such prohibition, shall forfeit 50*l.* and their license. Plays acted in public-houses shall be deemed performed for *gain*; prosecutions must be within six months.

By 25 Geo. II. c. 36, made perpetual by 28 Geo. II. c. 19, houses, gardens, or places, for public entertainment, music, dancing, or singing, within twenty miles of London, without a license from the preceding Michaelmas quarter sessions, shall be deemed disorderly houses. Constables may seize persons found therein, and the persons keeping the same shall forfeit 100*l.* Licensed places shall have an inscription over them declaratory thereof, and they are not to be opened before five in the evening. On breach of either of the conditions, the license shall be revoked. Not to extend to the theatres royal, or performances licensed by the Crown or the Lord Chamberlain.

By 28 Geo. III. c. 30, the justices in session, on petition, may license the performance of such plays as are performed at either of the *patent theatres*, or have been inspected by the chamberlain of the household, for not more than sixty days, to commence within the next six months, and to be within such four months as shall be specified in the license, so as there be but one license in use at the same time, the place not being within twenty miles of London, Westminster, or Edinburgh, or eight miles of any patent or licensed theatre, or ten miles of the royal residence, or of any place at which, within six months preceding, a license under this act, shall have been had, or within fourteen miles of either of the universities, or within two miles of the limits of any peculiar jurisdiction, and so, also, as no license under this act shall have been at the same place within eight months before. But no license shall be granted within any town unless three weeks' notice be given to the mayor, or chief officer, of the intended application. The 17 Geo. II. c. 5, in which players are considered *vagrants*, appears to have expired; as they are not enumerated as such in the new Vagrant Act, 5 Geo. IV. c. 83.

**POCKET SHERIFFS.** When the king appoints a person sheriff, who is not one of the three nominated by the

judges in the Exchequer, as he may do in the exercise of his prerogative, the person so appointed is called a *pocket sheriff*.

**POLICE** is the ministerial branch of administrative justice, and extends to the prevention of crimes, as the judicial applies to their punishment and legal adjudication. It is, also, occupied in watching over public order and economy, by preventing breaches of the peace, by the removal of nuisances and obstructions, and taking cognizance of the observance of those local and general laws made for the health, comfort, and convenience of the community.

**PONE**, a writ whereby a cause depending in the county, or other inferior court, is removed into the Common Pleas; and sometimes into the King's Bench; as when a replevin is sued by writ out of Chancery, &c. then if the plaintiff or defendant will remove that plea out of the county court into C. P. or K. B. it is done by *pone*.

**PORTERAGE.** By 39 Geo. III. c. 58, no person shall charge, within London, Westminster, Southwark, and the suburbs, and other parts, not exceeding half a mile from the end of the carriage pavement, for the porterage of parcels, not exceeding 56lbs. more than for not—

Exceeding a quarter of a mile..... 3d.

Exceeding a quarter and not half a mile .... 4d.

Exceeding half a mile and not one mile .... 6d.

Exceeding one mile and not a mile and half.. 8d.

Exceeding one mile and a half and not two miles 10d.

And so in proportion, 3d. for every further distance, not exceeding half a mile.

Tickets shall be made out at the inns and given to the porters, and by them delivered with the parcels; and any innkeeper not making out such tickets to forfeit not exceeding 40s. nor less than 5s.; and porters not delivering or defacing the same, 40s. or porters overcharging, 20s. Parcels brought by coaches shall be delivered *within six hours*, on pain of not exceeding 20s. nor less than 10s. Parcels brought by waggons shall be delivered *within twenty-four hours*, on a like penalty. Parcels directed to be left till called for, shall



be delivered to persons to whom the same shall be directed on payment of the carriage and 2d. for warehouse-room, on like penalty. Parcels if not sent for till the expiration of one week, 1d. more for warehouse-room may be charged. Parcels not directed to be left till called for, shall be delivered in like manner on demand, under a like penalty. *Misbehaviour* of porters may be punished by a justice by a fine not exceeding 20s. nor less than 5s. No porter is to be employed contrary to the usage of the City of London.

**POST-HORSE DUTIES.** These duties are regulated by the 4 Geo. IV. c. 62, by which persons letting any horse, mare, or gelding, *for hire*, without license from the Commissioners of Stamps, are subject to a penalty of 10l. No postmaster to keep more than one house by virtue of one license, under a penalty of 20l. and the words *Licensed to let horses* for hire are to be painted in legible characters on the fronts of their houses, under a penalty of 5l. Postmasters are to give security by bond, renewable at the expiration of three years. The commissioners, or collectors of stamps, to furnish *blank tickets* and *certificates* to postmasters, and *exchange* and *check tickets* to the toll-gate keepers; the former containing the name and abode of the postmaster, the number of horses, and whether let for a day or longer period; the latter, the name of the toll-keeper, the place where he lives, and the place the horses hired are going to. When horses are returned within the period for which they were hired, check-tickets are to be delivered up to the collector: penalty 20l. Improperly using a check-ticket subjects to a penalty of 50l. Travellers are to deliver up their tickets at the *first* toll-gate, and to *ask for* and receive the necessary exchange and check-ticket in return.

*Post-Horse Duties.*—Every postmaster to pay 5s. annually for a license.

For every horse, mare, or gelding, let for hire, *by the mile*, the sum of *one penny halfpenny* for every mile.

If let to go no greater distance than *eight miles*, one fifth part of the sum charged for such letting, or 1s. 9d.

If let to go no greater distance than eight miles, and not to *bring back* any person, nor deviate from the usual line of road, 1s.

If let for any time less than *twenty-eight* successive days, or in any other manner than *by the mile*, or to go no greater distance than *eight miles*, in either case, one-fifth part of the sum charged on every such letting; or the sum of 2s. 6d. for each day, not exceeding three days; and the sum of 1s. 9d. for each day exceeding three, and not exceeding thirteen days; and the sum of 1s. 3d. for each day exceeding thirteen and less than twenty-eight days.

If let for twenty-eight successive days, or for any longer period, and returned in a *less* period of time than *twenty-eight* successive days, and not exchanged for another horse, mare, or gelding, in continuation of the same hiring, one-fifth part of the sum agreed to be received for such letting, or the sum of 2s. 6d. for each day, not exceeding three days, and the sum of 1s. 9d. for each day exceeding three and not exceeding thirteen days, and the sum of 1s. 3d. for each day exceeding thirteen and less than twenty-eight days, during the time every such horse, &c. shall have been under the direction of the person hiring the same.

The duties imposed by the act do not extend to horses used in stage or hackney coaches, duly licensed, nor to any mourning coach or hearse, where the same shall be hired to go no greater distance than ten miles from Temple-bar, nor to any cart or carriage kept for the conveyance of fish.

**POST-OFFICE.** The Post-Office is managed by a Post-Master-General, with an annual salary of 5000*l.* who has under him many other officers, of his own appointing, sworn to the faithful discharge of their duties. It was established, nearly upon the present model, under the government of the Protector, in 1659, with the design not only of facilitating mercantile communications, but of detecting any traitorous designs against the commonwealth. The policy of having the correspondence of the empire under the inspection of government is still continued; for, by a warrant from one of the principal

Secretaries of State, letters may be detained and opened : but, by 9 Ann, c. 10, if any person shall wilfully detain or open a letter delivered to the Post-Office, without such authority, he shall forfeit 20*l.* and be incapable of having any future employment in the Post-Office.

No action can be maintained against the Post-Master-General for the loss of bills, bank-notes, or other articles sent by the post, *Raym.* 6. The safest mode of sending bills or notes is to cut them in halves, sending one at a time. Post-masters in country towns are not allowed to charge above the parliamentary rates, under the pretext of delivering the letters at the houses of the inhabitants ; which they are bound to do within the usual and established limits of the town, *Burr.* 270. But a charge of 1*d.* by the postman who collects letters in London seems allowed. By 9 Ann, c. 10, s. 17, none but the post-master shall carry letters under a penalty of 5*l.* for each offence, and 100*l.* a week besides ; half to the king and half to him that shall sue (with full costs) in any court of record. There are exceptions to this penalty in favour of the universities, also to letters sent by a private friend or messenger on purpose, or to letters sent with and relating to goods sent by a common carrier, if such letters are conveyed without hire.

*Rates of Postage.*—The following are the rates of postage for *single* letters in Great Britain, established by 41 Geo. III. c. 7, and subsequent acts ; namely, from any post-office in England or Wales to any place not above 15 miles from such office . . . . . 0 5

Above 15 miles and not exceeding 30 miles .. 0 6

Above 30 do. and not exceeding 50 do. 0 7

Above 50 do. and not exceeding 80 do. 0 8

Above 80 do. and not exceeding 120 do. 0 9

Above 120 do. and not exceeding 170 do. 0 10

Above 170 do. and not exceeding 230 do. 0 11

Above 230 do. and not exceeding 300 do. 1 0

Above 300 do. and not exceeding 400 do. 1 1

Above 400 do. and not exceeding 500 do. 1 2

And so in proportion, the postage increasing progressively one penny for a single letter, for any like excess of distance of 100 miles.

*Franking of Letters.*—Members of Parliament, and certain persons in right of their offices, as the lord chancellor, secretaries of state, lords of the treasury, paymaster of the land forces, judge advocate general, paymaster of the navy, clerks to the privy council, clerks to the House of Commons, president of the board of trade, and some others, are privileged, under certain restrictions, to send and receive letters free of postage. By 35 Geo. III. c. 53, no letter directed to or by any member of parliament shall be exempted from postage if it exceed one ounce in weight. No member is entitled to send, free of postage, more than ten letters in one day, nor to receive more than fifteen. No letter directed by any member shall be exempt, unless he shall be actually in the post-town, or within the limits of the delivery of its letters, or within twenty miles of such post-town, on the day, or on the day before the day on which the letter shall be put into the office. It is also necessary the *franks* should be dated; that the whole of the superscription be written by the member himself, with his name, place, and month at length, and be put into the office the same day. But the post-master-general, secretary, and assistant-secretary, may frank without dating. By 54 Geo. III. c. 169, members of parliament may receive *petitions*, addressed to either house, free of postage, so that they be sent in covers open at the sides, and do not weigh more than six ounces. A *catholic peer* is not entitled to send or receive letters free of postage, for it is the sitting in parliament that gives the right, not the peerage, *Lord Petre v. Auckland*.

*Newspapers and Pamphlets.*—That part of the 48 Geo. III. c. 63, which requires that newspapers, to be sent postage free, should be signed by a member of parliament, is repealed by the 6 Geo. IV. c. 68. By an act of last Session, the 7 & 8 Geo. IV. c. 21, every newspaper or other printed paper liable to the stamp duty, must be put into the post within SEVEN days after the date of publication, otherwise, such paper, after the *expiration of the seven days*, will be charged as a single letter from the place of publication of the paper to that to which it is addressed.

By the 7th section of the same act, *votes* and *proceedings* in parliament may be sent to the Colonies after the rate of one penny half penny for every ounce weight thereof. Colonial legislative proceedings or public papers may be received, at the same rate per ounce, from the Colonies. *Pamphlets, magazines, or other periodical publications*, not exceeding six ounces in weight, may be sent to the Colonies on the payment of 1s. each, and the further sum of three pence for every ounce above the six ounces. In both cases, they must be sent without cover or in a cover open at the sides, and there must be no other writing thereon than the superscription, nor any paper or thing concealed or enclosed therein.

By the 11th section, merchants' accounts, bills of exchange, stamped receipts, invoices, bills of lading and proceedings at law, written on the same piece of paper with a letter, are allowed without rate in the price of the letter; and any sheet of paper on which letters to several distinct persons are written shall not be charged higher than if only one letter were written upon such sheet or piece of paper.

*Seamen and Soldiers.*—By 46 Geo. III. c. 92, seamen, while actually employed in the public service, may send single letters, on their own private concerns only, at the rate of 1d. each, to be paid upon putting them into the post-office, provided that the name of the writer, his class, and description of the vessel, shall be superscribed, and also in the *handwriting* of, and signed by the officer commanding the vessel, his name and that of the ship. Letters may be, also, sent to seamen on the payment of 1d. on putting them into the post. By the 8th and 9th sections, the same provisions are extended to soldiers and non-commissioned officers in the army.

*General Post-Office Regulations.*—Letters to go the same day must be put in before seven o'clock, but those put in before half past seven will go that evening, paying 6d. with each. All foreign letters must be *paid for*, except those for the British West Indies. The West-India and America packet is made up the first, and the Leeward Island the third Wednesday in every month. Letters for the East Indies are received at a house in Abchurch-lane, appointed by the Post-Office.

**POT-WALLER**, a person who furnishes his own diet, which, in some boroughs, gives the right of voting for members of parliament.

**POUND** signifies an enclosure, where a distress is placed for safe custody, and may be either *overt* or *covert*. If a live distress of animals be impounded in a common pound *overt*, the owner and not the distrainer, is bound to provide the beasts with food and necessaries; but if they be put in a pound *covert*, as a stable or the like, the distrainer must feed and sustain them. A distress of household goods or other dead chattels, which are liable to be stolen or damaged by the weather, must be placed in a pound *covert*, else the distrainer must answer for the consequences, *Co. Lytt.* 47, 3 *Black.* 13.

**POURSUIVANT**, a term for a king's messenger.

**PRÆMUNIRE**, *the penalties of*, is applied to a number of old offences tending to promote the papal power in diminution of that of the Crown, and subjects the offender to forfeiture and confinement during the king's pleasure. Many statutes subjecting to præmunire are repealed, and prosecutions upon it are unheard of in our courts. There is only one instance of such a prosecution in the State Trials, in which case the punishment of præmunire was inflicted upon some persons for refusing to take the oath of allegiance in the reign of Charles II.

**PREMIUM PUDICITIÆ** is a consideration given to a previously virtuous woman, by the person who has seduced her, and equity will enforce the payment of a bond given to a woman whom the obligor has seduced, 2 *Peere Wms.* 432. So, where provision has been made for a female by an ineffectual conveyance, equity will interpose in her behalf, both against the grantor himself and his representative. But the courts distinguish between these obligations for consideration *past* and consideration in *future*; for, though a bond for *past* cohabitation is good, one to live in a *future* state of concubinage is void. A regard is also had to the previous character of the female. If a man has given a bond to his mistress, a common prostitute, and afterwards file a bill to be relieved against the same, it appears, from the case of *Whaley v. Norton*, that if the bill charge such to have been her situation,

equity will relieve against it. So, where a woman of good character went to live with the defendant, as a companion to his sister, knowing him to be *married*, and he having seduced her, and separated from his wife on the occasion, gave her a bond, as *præmium pudicitiae*, on a bill filed to enforce the payment thereof, the same was dismissed, as arising *ex turpi causa*, 2 *Ves.* 160. But this doctrine has been lately over-ruled in *Nye v. Mosely*, and it has been determined that an action at law may be maintained upon a bond given by a married man to a woman with whom he had cohabited for six years, and who knew that he was married, but who, until that time had conducted himself with propriety, 6 B. & C. 133 M. 3, 1826.

**PRE-AUDIENCE**, for the practice of the courts on this head, see page 124.

**PRESCRIPTION**.—See *Custom*.

**PRESENTMENT** is properly the notice taken by a grand jury of any offence from their own knowledge, without any bill of indictment laid before them; as the presentment of a nuisance, or a libel, upon which the officer of the court must afterwards frame an indictment, when the party presented can be put upon his trial.

**PRESIDENT OF THE COUNCIL** is the fourth great officer of state, his office is to attend on the king, to propose business at the council-table, and report to His Majesty the transactions there.

**PRIMAGE** is a duty at the water-side, due to the master and mariners of a ship, to the master for the use of his cables and ropes, to discharge the goods of the merchant, and to the mariners for loading and unloading in any port or haven; it is usually about 12*d.* per ton, or 6*d.* per pack or bale, according to custom, *Merch. Dict.*

**PROCHEIN AMY** is the next friend suing for an infant.

**PROTHONOTARY**, a chief officer or clerk in the King's Bench and Common Pleas; in the first there is *one*, in the latter *three* prothonotaries.

**PROTOCOL**, the first copy. The entry of an instrument in the book of a notary or other public officer, so if the original be lost the copy may be admitted as evidence.

**PUBLIC CHARITIES**. The King, as *parens patriæ*, is

the guardian of all charities; and the Attorney-General, at the relation of an informant, may file an information in the Court of Chancery to restore any abused or dilapidated foundation. Also, by 43 Eliz. c. 4, the lord chancellor may grant commissions to inquire into charitable abuses, and rectify the same by decree. The exercise of these powers being fettered under various circumstances, little practical benefit resulted from the application of them; and, in consequence, much more efficient measures have been recently adopted for investigating the abuses of charitable donations. By 58 Geo. III. c. 91, amended by 59 Geo. III. c. 81, and the provisions of both acts further continued for four years by 4 Geo. IV. c. 58, commissioners are appointed to inquire into the state and administration of public charities in England and Wales. These inquiries have continued six years, and are now in progress; the commissioners are twenty in number, and are divided into boards, each board, by examinations on the spot, investigating the charities of a particular parish, town, district, or corporation; and the labours of the whole are annually reported to parliament. The 52 Geo. III. c. 102, requires charities of a certain description, with the name of the founder, present trustees, and the gross revenue of each to be registered with the clerk of the peace. And the 1 & 2 Geo. IV. c. 92, authorizes, by a very circuitous procedure, the exchange of lands, tenements, or hereditaments, subject to trusts for charitable purposes, for other lands, tenements, or hereditaments.

**PUISNE**, signifying younger, junior, or last created. So the several judges and barons, not chiefs, are called *puisne* judges, or *puisne* barons.

**PUR AUTER VIE** is where lands are held for the life of another.

**PURVEYANCE**, *the right of*, an ancient privilege of the Crown, of levying, on its own terms, provisions, carriages, or cattle. Abolished by 12 Car. II. c. 24.

## Q

**QUAMDIU SE BENE GESSERIT**, a clause often inserted in the grant of offices, signifying that the party shall hold the same so long as he conducts himself properly.



**QUANTUM MERUIT**, so much as he has deserved.

**QUANTUM VALEBAT**, so much as they are worth.

**QUEEN ANNE'S BOUNTY**.—See *First Fruits*.

**QUID PRO QUO**, giving one thing for another ; being the mutual consideration in contracts.

**QUI TAM** is where an information is exhibited, or action prosecuted on a penal statute, for the sake of the penalty.

**QUIT-RENT** is a small rent, payable by the tenants of manors, in token of subjection, and by which the tenant goes quiet and free. In ancient records it is called *white-rent*, because paid in silver money, to distinguish it from corn-rent, &c.

**QUOD HOC**, a term used in law-pleading, signifying, *as to this*.

**QUORUM**. Justices or commissioners of the *quorum* are those whose presence is necessary in order that the rest may proceed. They are usually of greater experience or estate than the others. By 4 Geo. IV. c. 27, the powers of two or more justices in cities and towns corporate, though not of the quorum, are extended, so that all acts, adjudications, warrants of attorney, indentures of apprenticeship, and other instruments of such justices are valid.

**QUO WARRANTO**, an ancient writ, directed against a person or corporation who usurp any office, franchise, or liberty, to inquire by what authority they support their claim. The modern information tends to the same purpose as the writ of *quo warranto*, and is regulated by the 9 Ann, c. 20 ; 60 Geo. III. & 1 Geo. IV. c. 4.

## R

**RACK-RENT**, the full yearly value of the land.

**RANGER**. A sworn officer of the forest, created by the king's letters patent. His duties are to walk daily through his charge, to prevent trespasses, and preserve, within the boundaries of the forest, beasts of chase and venary.

**RANSOM BILL** is the security which the master of a captured vessel gives to the captor, for the ransom of her ; but, by 22 Geo. III. all contracts for that pur-

pose are rendered illegal, and all such bills absolutely void.

**RAPE**, a district of a county, equal to one or more hundreds.

**REALTY**, an abbreviation for the real estate, as *personalty* is for the personal estate.

**RE-ASSURANCE** is a contract which an insurer, who wishes to be indemnified against the risk he has taken upon himself, makes with another person, by giving to him a premium to *re-assure* to him the same event which he himself has insured.—See page 248.

**REBUTTER** is the answer of the defendant to the plaintiff's *surrejoinder*; and the plaintiff's answer to the rebutter is called a *surrebutter*: but it is very rare the parties go so far in pleading.

**RECORD**, a memorial, or authentic testimony, in writing, inscribed in rolls of parchment, and preserved in courts of record. It is the highest *written* evidence of a judicial fact, and does not admit of any proof or averment to the contrary.

**RECORDER**, a person associated by the king's grant, with the mayor and other magistrates of any city, or town corporate, for their better direction in legal proceedings; he is generally a barrister, or other person versed in the law.

**RED BOOK**, of the *Exchequer*, is an ancient record, in which are registered those who hold lands per baroniam in the time of Henry II.

**REGISTRY OF DEEDS**. By 2 Ann, c. 5, an office for the registry of deeds, conveyances, wills, and the like, is established at Waketield, in the *West Riding* of Yorkshire. Bargains and sales of land, enrolled in this office, are valid as if enrolled at Westminster; and if not enrolled, are deemed fraudulent and void against subsequent purchasers. The registrar is elected by ballot of the freeholders possessing 100*l.* per annum. No member of parliament can be chosen registrar, nor is the registrar eligible to be chosen a member of parliament. A similar registership is established for the *East Riding* of Yorkshire, by the 6 Ann, c. 35, and another for the *North Riding*, by the 8 Geo. II. c. 6. The register office

for Middlesex is regulated by the 7 Ann, c. 20. These statutes do not extend to copyhold estates, nor to leases at rack-rent. They were intended to give notice of incumbrances to purchasers, that they may not be defrauded; but if a man knew of an incumbrance, and will, notwithstanding, purchase, he is bound, though the incumbrance was not registered, 1 *Ves.* 64. And the registry of an assignment or mortgage of a lease will not bar a subsequent purchaser, if the lease itself be not registered, 2 *Strange*, 1064.

**REGISTRY OF SHIPS.** No ship is entitled to the privileges of a British Ship, as secured by the act for the encouragement of British Shipping, unless registered with the collector and comptroller of the customs, according to the provisions of the 6 Geo. IV. c. 110. Ships exercising the privileges of registered vessels before registry, to be forfeited. The name of the vessel which has been registered is never afterwards to be changed. Name to be painted on the stern, under a penalty of 10*l*.

**REGIUS PROFESSOR**, a reader of lectures in the universities, founded by Henry VIII. who was the founder of five lectureships in each university of Oxford and Cambridge,—namely, of divinity, Greek, Hebrew, law, and physic, the readers of which are called, in the university statutes, *regii professores*.

**REPORTS.** These comprise the decisions on legal issues, which are preserved as authentic records in the archives of the several courts, and communicated to the public in numerous volumes that furnish the lawyer's library. They contain a history of the several cases, with a summary of the proceedings, which are preserved at length in the record; the arguments on both sides, and the reason the Court gave for its judgment, taken down in short notes by persons present at the determination. The *Reports* are extant in a regular series from the reign of Edw. II. inclusive; and from his time to that of Hen. VIII. were taken by the prothonotaries, or chief scribes of the Court, at the expense of the Crown, and published annually, whence they are known under the denomination of the *Year-books*. From the reign of Hen. VIII. to the present period, the task has devolved

on *private* and contemporary individuals, who, sometimes through haste and inaccuracy, sometimes through mistake and want of skill, have published imperfect and even contradictory accounts of one and the same decision. The reports of cases occupy upwards of 200 volumes, exclusive of those which relate to election, admiralty, and ecclesiastical law; and it is calculated that if they continue proportionally to increase to the end of the present century, they will occupy upwards of 1000 volumes. The statutes form scarcely a less voluminous compilation; a continuation of Viner's Abridgement to the present time would occupy at least 100 folio volumes; and if the public acts continue to accumulate in the ratio of late years, they will amount, at the end of the century, to 14,000, exclusive of local and private statutes. From this description it may be readily conceived what a long and laborious task is imposed on the professional student, and how many years of application are required to explore the great fountains of legal knowledge, so as to become tolerably acquainted with the administrative law of England.

**ROASTED CORN.** By 3 Geo. IV. c. 53, persons not dealers in coffee may roast and sell corn, beans, peas, or parsnips, by taking out an annual license from the commissioners of excise, for which they pay 2s. 6d. The premises where sold must be entered, and the packages marked "*Roasted Corn, Peas, Beans, or Parsnips,*" as the case may be. Penalty 50*l.*

**ROYAL FISH** are *whale* and *sturgeon*, which belong to the king and queen in certain proportions, when either thrown on shore or caught near the coast. Of sturgeon, the king is entitled to the whole himself; but of the whale he can only claim the *head*, and the queen the *tail*. The reason of this whimsical division, as assigned by the ancient records, is to furnish the queen's wardrobe with whalebone. But, as Mr. Christian remarked, the reason is more whimsical than the division, for the whalebone lies entirely in the head.

**RUBRICS**, so called because anciently written in *red* letter; they are the constitutions of the established

church, founded upon the Statute of Uniformity and book of Common Prayer.

## S

**SALIQUE LAW**, the ancient law in France, by which females are excluded from the succession.

**SALMON.** By 58 Geo. III. c. 4, justices at sessions are empowered to appoint conservators of rivers for the preservation of the salmon, and fish of the salmon kind, and fix the time when such fish may be taken. Destroying salmon, or the spawn of salmon, by nets, engines, or other device, incurs a penalty of from 5*l.* to 10*l.* for the first offence, and for every subsequent offence from 10*l.* to 15*l.* Persons having in possession any spawn, fry, or unsizable salmon, the same may be seized, and the offender made liable to penalty from 5*l.* to 10*l.*

**SALT-DUTY.** This duty was thought to bear hard upon the working classes; and, also, to prevent the consumption of salt for agricultural purposes. By the 5 Geo. IV. c. 65, it was, therefore, entirely done away with.

**SANCTUARY.** Ancient superstition gave peculiar privileges to consecrated ground, so that delinquents who took refuge there were protected from criminal justice. Thus, if a person accused of any crime, except treason and sacrilege, had fled to a church, or church-yard, and, within forty days after, went in sackcloth, and confessed his guilt before the coroner, disclosing all the circumstances of his offence, and thereupon took oath to abjure the realm, his life was spared, provided he observed the condition of his oath, by going with a cross in his hand, and, with all convenient speed, embarking at the port assigned. By this abjuration, however, his blood was attainted, and he forfeited all his goods and chattels. These immunities were much abridged by 27 Hen. VIII. c. 19, & 32 Hen. VIII. c. 12. And, by the 21 Jac. I. c. 28, all privilege of sanctuary is abolished.

**SATURDAY'S STOP.** A space of time from even-song on Saturday till sun-rising on Monday, in which it was not lawful to take salmon in Scotland and the northern parts of England, *Cowell*.

**SCAVALGE**, a kind of toll or custom, exacted by mayors,

sheriffs, &c. of merchant-strangers, for wares exposed to sale within their liberties, prohibited by the 19 Hen. VII. c. 7. But the City of London still retains this ancient custom.

**SCIRE FACIAS**, the name of a judicial writ, most commonly to call a man to show cause to the Court whence it issues why the execution of judgment passed against him should not be made out.

**SCOT AND LOT** is a term including all parochial assessments for the poor, the church, lighting, cleansing, watching, &c. The right of voting for members of parliament, and for municipal offices, is, in many places, vested in the payers of *scot* and *lot*.

**SCOTLAND.** The kingdom of Scotland, notwithstanding the union of the crowns on the accession of James VI. to that of England, continued a separate and distinct kingdom for above a century after, though an union had long been projected, which was judged more feasible, as both nations were anciently under the same government, and still retained a great resemblance in their laws and institutions. Sir E. Coke supposes the common law of each to have been *originally* the same, especially as the most ancient and authentic law-book of the Scotch, the *Regiam Majestatem*, containing the rules of their ancient common law, is extremely similar to that of Glanvil, which contains the principles of the English common law, as it stood in the reign of Henry II. The diversities subsisting between the two laws at present may be readily accounted for, from the diversity of practice in two large and uncommunicating jurisdictions, and from the acts of two distinct and independent parliaments, which have, in many respects, altered and abrogated the common law of both kingdoms. The great work of the UNION between the two kingdoms was effected in 1707, by 6 Ann. c. 8, when twenty-five articles of union were agreed to by the parliaments of both nations, the substance of the most considerable being as follows:—

1. That, on the 1st of May, 1707, and for ever after, the kingdoms of England and Scotland shall be united into one kingdom, by the name of Great Britain.

2. The succession to the monarchy of Great Britain

shall be the same as was before settled with regard to that of England.

3. The United Kingdom shall be represented by one parliament.

4. There shall be a communication of all rights and privileges between the subjects of both kingdoms, except where it is otherwise agreed.

9. When England raises £2,000,000 by a land-tax, Scotland shall raise £48,000.

16, 17. The standards of the coin, of weights, and of measures, shall be reduced to those of England, throughout the United Kingdom.

18. The laws relating to trade, customs, and the excise, shall be the same in Scotland as in England, but all the other laws of Scotland shall remain in force, though alterable by the parliament of Great Britain, yet with this proviso, that laws relating to public policy are alterable at the discretion of the parliament; laws relating to *private* rights are not to be altered but for the evident utility of the people of Scotland.

22. Sixteen peers are to be chosen to represent the peerage of Scotland in parliament, and forty-five members to sit in the House of Commons.

23. The sixteen peers of Scotland shall have all privileges of parliament, and all peers of Scotland shall be peers of Great Britain, and rank next after those of the same degree at the time of the Union, and shall have all privileges of peers, except sitting in the House of Lords, and voting on the trial of a peer.

Upon these articles of Union, and the act relating thereto, two observations may be made: *First*, the Church of Scotland and the four Universities of that kingdom are established for ever, and all succeeding sovereigns are to take an oath inviolably to maintain them. *Secondly*, the municipal laws of Scotland are still ordained to be observed in that part of the island, unless altered by parliament; so that the municipal, or common law of England is, for the most part, of no validity in Scotland. But acts of parliament, since the Union, in general extend to Scotland, unless the act itself provides expressly to the contrary. The eldest

son of a Scotch peer cannot be elected one of the forty-five representatives, for he was incapable of sitting in the Scotch parliament before the Union, and the law, in this respect, has not been since changed. But the eldest son of a Scotch peer may represent any place in England. The landed qualifications of 600*l.* and 300*l.* required in England, do not extend to Scotland; and a candidate for Scotch representation is only required to have the same qualification as the electors.

**SCRIVENER**, one who is employed to draw up and engross deeds, conveyances, and securities for money.

**SCUTAGE** was a tax or contribution, raised by those that held lands by knight's service, towards furnishing the king's army, at one, two, or three marks for every knight's fee, 1 *Black.* 309.

**SEAL-DAYS**, certain days in the Court of Chancery, appointed by the Court, before or after term, to hear motions and other judicial matters; they are four in number, and each seal is usually at the interval of about a week.

**SEIGNORAGE**, a deduction from bullion brought to the Mint to be exchanged for coin.

**SERJEANTS-AT-ARMS**. Their office is to attend the royal person, to arrest offenders of rank, and attend on the lord high steward of England, sitting in judgment on traitors. Their number is limited to thirty by the 13 Rich. II. c. 6. Two of them attend on the houses of parliament, one on the lord chancellor, and one on the lord treasurer, and one on the lord mayor of London on extraordinary occasions. They are in the old books called *Virgatories*, because they carried silver rods, gilt with gold, as they now do maces.—For *Sergeant-at-Law*, see page 124.

**SERMONIUM** was an interlude or historical play acted on high procession days, in the body of the church or cathedral, by the inferior clergy, and was a mingled dramatic and religious celebration. Such were the ancient mysteries and the ceremony of the Boy-Bishop. The Eton Montem is the only remaining example of these shows.

**SERVITOR**, a serving-man, especially applied to scho-



lars in the colleges of the Universities, upon the foundation.

**SESSIONS.** Every county is divided into certain divisions, and though the legal qualities of a division are not very well ascertained, yet the thing is recognized by several acts of parliament. The justices residing in each division, although their commission extends to the whole county, yet, except at general or quarter sessions, ordinarily confine themselves to matters arising within the division. Within this limit they have generally one or more stated places where they meet at certain stated times, monthly or oftener, as the public business may require, and there transact all such matters of a summary nature as, by law, require the presence of *more* than one justice, and yet need not be done at general, quarter or special sessions. These meetings are properly *petty sessions*. *Special sessions* are meetings held by the justices of divisions for some especial purpose, by notice, specifying the time, and place, and purpose. These are held in pursuance of sundry statutes, directing particular things (the diversion of highways, for instance) to be done at such meetings. As the time and place of these meetings are occasional, and vary with the object, a reasonable notice to all the magistrates of the division is necessary to render the order made there valid.

**SEVERALTY.** An estate in *severalty* is where it is held by one person in his own exclusive right, without any other being joined or interested therein.

**SHIP-MONEY,** an impost charged upon the ports, towns, cities, boroughs, and counties of the kingdom, in the time of Charles I. by writs called "*ship-writs*," for providing ships for the king's service. Such a mode of raising money is declared illegal by the Petition of Right.

**SHIPPER,** a Dutch word signifying master of a ship, but used for common seamen.

**SHIP'S PASSENGERS.** The 4 Geo. IV. c. 88, regulates the carrying of passengers between Great Britain and Ireland. By this act, no master of a vessel under 200 tons shall take more than twenty passengers, unless licensed by the collector of the customs at the port of

sailing. Vessels licensed not to take, exclusive of the crew, more than five adult persons, or ten children under fourteen, or fifteen children under seven years, for every four tons burthen; and if such vessels be partly laden with goods or wares, not to take more than the above proportion of passengers for every four tons that remain unladen. Penalty for carrying more than *twenty* without license, 50*l.* and if licensed for more than the above proportion for each four tons burthen, 5*l.* each passenger. Merchant vessels of not more than 100 tons not to carry more than ten persons, or not more than 200 tons not more than twenty persons: penalty 5*l.* each person. The 6 Geo. IV. c. 116, which regulated the conveyance of passengers to foreign parts, is repealed by 7 & 8 Geo. IV. c. 19.

**SIGNET** is one of the king's seals, used in sealing his private letters, and all such grants as pass his Majesty's hand by bill signed, which seal is always in the custody of the king's secretaries, and there are four clerks of the signet-office attending them, 2 *Inst.* 556.

**SIGN MANUAL**, the superscription of the king at the top of grants or letters patent. By 6 Geo. IV. c. 25, a warrant under the royal sign manual, countersigned by one of the principal secretaries of state, granting a free pardon, and the prisoner's discharge under it; or granting a *conditional* pardon and the performance of such condition is as effectual as a pardon under the great seal.

**SILK.** The duties on the importation of silk and silk goods until the 10th October, 1828, are regulated, as under, by the 7 Geo. IV. c. 53.

	£	s.	d.
Knubs, or husks of silk .....the lb.	0	0	1
Raw silk.....ditto	0	0	1
Thrown silk, not dyed, namely,—			
Singles .....ditto	0	2	0
Tram .....ditto	0	3	0
Organzine and crape .....ditto	0	5	0
Thrown silk, dyed, namely,—			
Singles .....ditto	0	4	0
Organzine and crape .....ditto	0	6	8

Manufactured silks are subject to a reduced rate of duty on importation, varying from 12*s.* to 4*l.* per pound, and the articles not enumerated are subjected to an *ad valorem* duty of 30 per centum. Wrought silks are not allowed to be imported in vessels of less burthen than seventy tons, except in vessels direct from Calais to Dover, in vessels of sixty tons and upwards. Nor can they be imported unless in packages, each of which contains, at least, 100*lbs.* of wrought silk. As some compensation to the home-manufacturer for the reduction of the import duties on wrought silk, the duty of excise on the soap used in the throwing, printing, or dying of silk is remitted: also, duties of excise imposed upon the printing of silks were remitted after the 5th April, 1826.

SILVER. By 56 Geo. III. c. 68, the pound troy of standard silver, eleven ounces two pennyweights fine, may be coined into sixty-six shillings; and, by the same act, *no tender in silver exceeding 40*s.* shall be legal.* From the conquest to the 20 Edw. III. a pound sterling was *actually* a pound troy weight, which was divided into twenty shillings; so if ten pounds at that time was the price of a horse, the same quantity of silver was paid for it as is now given if its price be thirty-three pounds. This, therefore, is one great cause of the apparent difference in the prices of commodities in ancient and modern times. About the year 1347, Edward III. coined twenty-two shillings out of a pound; and, five years after, coined twenty-five shillings out of the same quantity. Henry VII. increased the number of shillings to forty, which was the standard number till the beginning of the reign of Elizabeth, who coined a pound sterling into sixty-two shillings.

SIMILITUDE OF HANDWRITING. The mere similitude of handwriting in two papers shown to a jury, without other concurrent testimony, is no evidence that *both* were written by the same person. But the testimony of witnesses acquainted with the party's hand, that they believe the paper in question to have been written by him, is evidence to be left to a jury, 1 *Burr.* 644.

SITTINGS, the name given to the courts of *Nisi Prius*

in London and Middlesex: those for Middlesex were established in the reign of Elizabeth, empowering the chief justices to try within the term, or within four days after the end of the term, all the issues joined in the Courts of Chancery and King's Bench: and that the chief justice of the Common Pleas and the chief baron should try, in like manner, the issues joined in their respective Courts. In the absence of the chief, the same authority is given to two of the judges or barons of the Court. The time was successively extended, and now continues unlimited during the vacation next after the term, by 1 Geo. IV. c. 59.

**SIX CLERKS.** These rank next to masters in chancery; their chief business is to transact and file all proceedings by bill and answer, and also to issue certain patents which pass the great seal, as pardons for chance-medley, patents for ambassadors, sheriffs' patents, and some others. Each clerk has ten sworn clerks under him, who transact the business of their superior. The Six Clerks' Office is in Chancery-lane; it resembles the floor of a church or chapel, and is divided into sixty pews, or, as they are termed, *seats*, for each clerk.

**SLAVE-TRADE.** By the 5 Geo. IV. c. 17, persons engaged in the African slave-trade are adjudged guilty of *piracy*. And, by 5 Geo. IV. c. 113, the purchase and sale of slaves, their exportation and importation, the fitting out of vessels, the insuring them or serving on board, are declared unlawful, and subjects to forfeiture of ship and goods, and 100*l.* for every slave so sold, dealt in, or removed. This act, which amends and consolidates former acts on the slave-trade, comprises a great many other provisions, too diffuse to be here specified.

**SLAUGHTERING HOUSES.** By 26 Geo. III. c. 71, any person keeping a place for slaughtering horses, geldings, asses, sheep, hogs, or other cattle, not killed for butcher's meat, shall obtain a license from the quarter-sessions, first producing from the parish a certificate of fitness and ability. Persons slaughtering horses, or cattle, without license, are guilty of felony, and may be transported. Persons licensed shall affix to their

houses, "*Licensed for Slaughtering Horses, pursuant to an Act passed in the 26th Year of His Majesty King Geo. III.*" Inspectors are chosen annually, and their occupation inscribed over their dwellings. The act does not extend to curriers, fellmongers, tanners, or persons killing aged or distempered cattle; but such persons killing *sound* cattle are liable to a penalty of 50*l.*

**SNUFF.** Mixing it with fustick, yellow ebony, touchwood, logwood, red or guinea wood, braziletto or Jamaica wood, Nicaragua, Saunder's, or any other wood; or any walnut-tree, hop, sycamore, or other leaves, herbs, or plants, incurs a penalty of 200*l.* by 29 Geo. III. c. 68; and having any such materials in possession is a forfeiture thereof, and of 50*l.*

**SPECIALTY**, a bond, bill, or such like instrument; a writing or deed under the hand and seal of the parties.

**SPINSTER**, an addition usually given to all unmarried women, and derived from their supposed occupation in spinning.

**SPIRITS.** The duties on British spirits, and the distillation and retail of spirits, are regulated by the 6 Geo. IV. c. 80; by which the duty to be paid after the 5th of Jan. 1826, is—For every 100 gallons, imperial standard gallon measure, of spirits of the strength of hydrometer proof, as denoted by the hydrometer called Syke's hydrometer, which shall be distilled in England, the sum of 35*l.* and so in proportion for any greater or less degree of strength, and for any greater or less quantity, to be paid by the first maker or distiller of such spirits. The same duty is imposed on *Scotch* and *Irish* spirits imported into England.

*Strength of Spirits.*—No dealer in British spirits shall sell, or have in his possession any plain British spirits, except spirits of wine, of any strength *exceeding* the strength of twenty-five per centum above hydrometer proof, or of any strength *below* seventeen per centum under hydrometer proof; or any compounded spirits, except shrub, of any greater strength than seventeen per centum under hydrometer proof, on pain of forfeiting all such spirits as shall be sold, had, or kept, by such

dealer, with the casks or packages containing the same: which may be seized by any officer of excise.

**Gaols and Workhouses.**—No license to be granted for retailing spirits within gaols, houses of correction, or workhouses for parish poor; nor shall spirits be used there, except as shall be medicinally prescribed by a regular physician or apothecary. Penalty, for offences committed by gaolers or masters of workhouses, 100*l*.

**Hawking Spirits.**—Persons hawking spirits, to forfeit them and 100*l*. and may be convicted by one justice; and if the penalty be not paid immediately, committed to the House of Correction for three months, or until paid. Any person may detain a hawker of spirits, and give notice to a peace officer, who is to carry the offender before some justice.

A plaintiff in an action for a tavern-bill is not entitled to recover for any items under 20*s*. for spirits supplied to the guests, such sales being prohibited by 24 Geo. II. c. 40, sec. 16, *Burnyeat v. Hutchinson*, 5 B. & A. 241.

**SPRING GUNS.** By an act of last session, the 7 & 8 Geo. IV. c. 18, if any person set any *spring gun*, *man-trap*, or *other engine* calculated to destroy human life, or inflict grievous bodily harm, upon any trespasser or other person coming in contact therewith, he shall be guilty of a MISDEMEANOR. Persons knowingly suffering any such engines to continue in their grounds after coming in possession thereof, though not set by them, are equally guilty. But these provisions do not extend to any gin or trap, such as may have been or may be usually set to destroy vermin. It is also specially provided that nothing in the act shall make it a misdemeanor to set, from sun-set to sun-rise, any spring gun, man-trap, or other engine, which shall be placed in any *dwelling-house* for the protection of the same.

This act does not extend to Scotland.

**SPIRITUALITIES OF A BISHOP** are those ecclesiastical profits which he receives as a bishop, and not as a baron of parliament.

• **STAMP DUTIES.** These form an important branch of the revenue, first imposed in the reign of William III.

and include a variety of duties levied on receipts, bills and notes, licenses, indentures of apprenticeship, agreements, bonds, bills of lading, conveyances, and other legal instruments. Duties on proceedings in courts of justice, being considered a tax on justice, by the 5 Geo. IV. c. 41, the stamp-duties payable on proceedings in the several courts of law and equity, as well in the admiralty and ecclesiastical courts, are repealed; also, on bonds on replevy of goods, and on copies or extracts of wills or powers of attorney deposited in any ecclesiastical court. The 7 & 8 Geo. IV. c. 55, consolidates the Boards of Stamps in Great Britain and Ireland, and from October 5th, 1827, the commissioners of stamps for Great Britain act for the United Kingdom.

## RECEIPTS.

Amounting to	£2 and under	£5	.....	0	0	2
Amounting to	5 and under	10	.....	0	0	3
Amounting to	10 and under	20	.....	0	0	6
Amounting to	20 and under	50	.....	0	1	0
Amounting to	50 and under	100	.....	0	1	6
Amounting to	100 and under	200	.....	0	2	6
Amounting to	200 and under	300	.....	0	4	0
Amounting to	300 and under	500	.....	0	5	0
Amounting to	500 and under	1000	.....	0	7	6
Amounting to	1000 or upwards		.....	0	10	0
Receipts in full of all demands			.....	0	10	0

The stamp to be paid by the person giving the receipt.

Persons refusing to give a receipt on demand, or to pay the amount of the stamp, are liable to a penalty of 10*l*. By 35 Geo. III. c. 55, writing or signing any receipt, discharge, or acquittance, without a stamp, or a stamp of the proper denomination, subjects to a penalty of 10*l*.

## INLAND BILLS AND NOTES.

		<i>Not exceeding two months.</i>			<i>Above 2 months.</i>		
If	.....£2 and not above	£5:5 <i>s</i> .	0	1	0	£0	1 6
Above	5:5 <i>s</i> .	—	20	..	0 1 6	..	0 2 0
Above	20	—	30	..	0 2 0	..	0 2 6
Above	30	—	50	..	0 2 6	..	0 3 6'
Above	50	—	100	..	0 3 6	..	0 4 6

Above £100	—	£200 .. 0	4	6	£0	5	0
Above 200	—	300 .. 0	5	0	.. 0	6	0
Above 300	—	500 .. 0	6	0	.. 0	8	0
Above 500	—	1000 .. 0	8	6	.. 0	12	6
Above 1000	—	2000 .. 0	12	6	.. 0	15	0
Above 2000	—	3000 .. 0	15	0	.. 1	5	0
Above 3000 and upwards	.....	1	5	0	.. 1	10	0

Promissory notes from 2*l.* to 100*l.* inclusive are not to be drawn payable to *bearer on demand*, except bankers' *reissuable* notes, which require a different stamp. But notes for any sum exceeding 100*l.* may be drawn either payable to bearer on demand or otherwise. By 7 Geo. IV. c. 6, all promissory notes for *less* than 5*l.* issued by the Bank of England, or by any licensed English banker, are to be withdrawn from circulation after the 5th of April, 1829.

## FOREIGN BILLS OF EXCHANGE.

Foreign bills, drawn in, but payable out, of Great Britain, if drawn *singly*, the same duty as an inland bill.

Foreign bills of exchange, drawn in sets, for every bill of each set, if the sum does not

exceed .....	£100 .. 0	1	6
Exceeding £100 and not exceeding 200 ..	0	3	0
Exceeding 200 and not exceeding 500 ..	0	4	0
Exceeding 500 and not exceeding 1000 ..	0	5	0
Exceeding 1000 and not exceeding 2000 ..	0	7	6
Exceeding 2000 and not exceeding 3000 ..	0	10	0
Exceeding 3000 .....	0	15	0

## ADVERTISEMENTS AND LEGAL INSTRUMENTS.

*Advertisements* in the London Gazette, or any newspaper, periodical pamphlet, or literary work .....

<i>Agreement.</i> Where the same shall not contain more than fifteen common law sheets.....	1	0	0
And above.....	1	15	0
And for every fifteen above the first.....	1	5	0

But where divers letters shall be offered in evidence, to prove any agreement between the parties, it shall be sufficient if any one of such letters shall be stamped with a duty of 1*l.* 15*s.* although the same shall, in the



whole, contain twice the number of 1080 words or upwards.

**EXEMPTIONS.**—Label, slip, or memorandum, containing the heads of insurances by the Royal Exchange Assurance and London Assurance.—Memorandum or agreement for granting a release at rack-rent, of any tenement under the yearly rent of 5*l*.—Memorandum for the agreement or hire of any labourer, artificer, manufacturer, or menial servant.—Memorandum, letter, or agreement relating to the sale of goods.—Memorandum or agreement made between the master and mariners of any ship or vessel, for wages, on any voyage coastwise.—Letters containing any agreement (not before exempted) in respect of any merchandize, or evidence of such an agreement, which shall pass by the post, between merchants or other persons carrying on trade or commerce, at the distance of fifty miles from each other.

*Almanack or Calendar* ..... £0 1 3

*Appraisement* of estate or effects when the value does not exceed £50 ..... 0 2 6

Exceeding £ 50 and not exceeding £100.... 0 5 0

Exceeding 100 and not exceeding 200.... 0 10 0

Exceeding 200 and not exceeding 500.... 0 15 0

Exceeding 500 ..... 1 0 0

*Apprenticeship Indentures*, when the premium does not amount to £30 ..... 1 0 0

Amounting to £ 30 and not to £ 50 ..... 2 0 0

Amounting to 50 and not to 100 ..... 3 0 0

Amounting to 100 and not to 200 ..... 6 0 0

Amounting to 200 and not to 300 ..... 12 0 0

Amounting to 300 and not to 400 ..... 20 0 0

Amounting to 400 and not to 500 ..... 25 0 0

Amounting to 500 and not to 600 ..... 30 0 0

Amounting to 600 and not to 800 ..... 40 0 0

Amounting to 800 and not to 1000 ..... 50 0 0

Amounting to 1000 or upwards ..... 60 0 0

Where there shall be no premium, if the indenture shall not contain more than 1080 words ..... 1 0 0

If the same contain more than that quantity.. 1 15 0

Parish Indentures and Charity Indentures are exempt.

*Clerkship Indentures*, in order to be admitted Attorney in the Courts of Westminster, Sworn Clerk, &c. in the office of Six Clerks, or in the office of Pleas, or Remembrancer in the Court of Exchequer, or as Proctor of the Admiralty ..... 120 0 0

— For the same mode of admission as above into the Welsh Courts, those of the counties palatine of Lancaster, Chester, and Durham, or other Courts of Record; or in order to admission as Writer of the Signet, or Solicitor in any Court in Scotland ..... 60 0 0

— For duplicates of such indentures.. 1 15 0

\* *Assignment* of property, real or personal, not otherwise charged or expressly exempted.. 1 15 0

\* *Award* in England ..... 1 15 0

\* *Bargain and Sale*, or lease for a year, where the purchase or consideration money shall not amount to 20*l.* ..... 0 10 0

Where it shall amount to 20*l.* and not to 50*l.* . 0 15 0

Where it amounts to 50*l.* and not to 150*l.*.... 1 0 0

Where it amounts to 150*l.* or upwards ..... 1 15 0

\* *Bargain and Sale*, or lease for a year, upon any other occasion..... 1 15 0

*Bargain and Sale* (to be enrolled) of any estate of freehold, in lands, or other hereditaments, upon any other occasion than mortgage or sale ..... 5 0 0

*Bill of Lading* for any goods, merchandize, or effects, to be exported or carried coastwise. 0 8 0

\* *Bond*, given as security for the payment of any certain sum, not exceeding 50*l.* ..... 1 0 0

Exceeding £50 and not exceeding £100 1 10 0

\* Where any of the instruments marked with an (\*) contain 2160 words, or upwards, then for every entire quantity of words after the first 1080, the further progressive duty of 1*l.* 5*s.*

Exceeding £100 and not exceeding £200	2	0	0
Exceeding 200 and not exceeding 300	3	0	0
Exceeding 300 and not exceeding 500	4	0	0
Exceeding 500 and not exceeding 1000	5	0	0
Exceeding 1000 and not exceeding 2000	6	0	0
Exceeding 2000 and not exceeding 3000	7	0	0
Exceeding 3000 and not exceeding 4000	8	0	0
Exceeding 4000 and not exceeding 5000	9	0	0
Exceeding 5000 and not exceeding 10,000	12	0	0
Exceeding 10,000 and not exceeding 15,000	15	0	0
Exceeding 15,000 and not exceeding 20,000	20	0	0
Exceeding 20,000 .....	25	0	0

EXEMPTIONS.—Bonds of the Royal Exchange and London Assurance Corporations.—Bonds for Fisheries.—Bonds for the exportation of wool, tobacco, &c.—Bonds for carrying goods coastwise.—Bonds for Friendly Societies.—Bonds for making playing cards, and selling or using stamps for newspapers.—Bonds given by collectors of assessed taxes; by seamen's relations, and by persons administering when the property does not exceed 20*l*.

\* *Charter-party*, or any memorandum, letter, or writing, relating to the freight, &c. .... 1 15 0

\* *Composition deed*, between debtors and creditors ..... 1 15 0

\* *Conveyance*, upon the sale of lands, tenements, rents, annuities, or other property, where the purchase or consideration money, therein expressed shall not amount to 20*l*. .... 0 10 0

Amounting to £20 and not to £50 .. 1 0 0

Amounting to 50 and not 150 .. 1 10 0

Amounting to 150 and not 300 .. 2 0 0

Amounting to 300 and not 500 .. 3 0 0

Amounting to 500 and not 750 .. 6 0 0

Amounting to 750 and not 1,000 .. 9 0 0

Amounting to 1,000 and not 2,000 .. 12 0 0

Amounting to 2,000 and not 3,000 .. 25 0 0

Amounting to 3,000 and not 4,000 .. 35 0 0

Amounting to 4,000 and not 5,000 .. 45 0 0

Amounting to 5,000 and not 6,000 .. 55 0 0

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Amounting to £6,000 and not	£7,000 ..	65	0	0
Amounting to 7,000 and not	8,000 ..	75	0	0
Amounting to 8,000 and not	9,000 ..	85	0	0
Amounting to 9,000 and not	10,000 ..	95	0	0
Amounting to 10,000 and not	12,500 ..	110	0	0
Amounting to 12,500 and not	15,000 ..	130	0	0
Amounting to 15,000 and not	20,000 ..	170	0	0
Amounting to 20,000 and not	30,000 ..	240	0	0
Amounting to 30,000 and not	40,000 ..	350	0	0
Amounting to 40,000 and not	50,000 ..	450	0	0
Amounting to 50,000 and not	60,000 ..	550	0	0
Amounting to 60,000 and not	80,000 ..	650	0	0
Amounting to 80,000 and not	100,000 ..	800	0	0
Amounting to 100,000 or upwards .....	1000	0	0	0
<i>Conveyance of any kind not otherwise charged .</i>		1	15	0
<i>Debenture or certificate, entitling to drawback of custom or excise duties, or any bounty ..</i>		0	5	0
<i>*Declaration of any use or trust, not being a deed or will .....</i>		1	15	0
<i>*Deed of any kind whatever, not otherwise charged .....</i>		1	15	0
<i>*Letter of License, from creditors to a debtor .</i>		1	15	0
<i>Letter of Attorney, for receiving prize-money .</i>		0	1	0
————— And for receiving wages ..		1	0	0
————— For the sale, transfer, or receipt of dividends of the funds .....		1	0	0
<i>*————— Of any other kind .....</i>		1	10	0
<i>License for Marriage, in England, if special..</i>		5	0	0
<i>License for Marriage, in England, if not special .....</i>		0	10	0
<i>License for Pawnbrokers, in London and Westminster, or within two-penny post limits, yearly .....</i>		15	0	0
<i>If any other place, yearly .....</i>		7	10	0
<i>License for Appraiser, (not being Auction- eer) yearly .....</i>		0	10	0
<i>License for Bankers, yearly .....</i>		30	0	0
<i>License for Physic, to exercise the faculty of</i>		15	0	0
<i>Mortgages, the duty is same as Bonds, which see before, page 565.</i>				
<i>Pamphlets, containing one whole sheet, and not</i>				

exceeding eight sheets in octavo, or any lesser page, or not exceeding twelve sheets in quarto, or twenty sheets in folio; for every sheet contained in any one copy .....	0	3	0
By 1 Geo. IV. c. 9, periodical pamphlets, containing <i>news</i> , <i>occurrences</i> , or any <i>remarks</i> thereon, are subject to the same duties as <i>newspapers</i> .			
<i>Passport</i> .....	0	5	0
<i>Policy</i> of insurance, or other instrument, made upon any life or lives, where the sum insured shall not amount to 500 <i>l.</i> ....	1	0	0
Amounting to 500 <i>l.</i> and not 1,000 <i>l.</i> .....	2	0	0
Amounting to 1,000 and not 3,000 .....	3	0	0
Amounting to 3,000 and not 5,000 .....	4	0	0
Amounting to 5,000 or upwards .....	5	0	0
<i>Policy</i> upon any building, goods, wares, &c. from loss or damage by fire only .....	0	1	0
And for every sum of 100 <i>l.</i> and so in proportion for any greater or less sum, which shall be insured from loss or damage by fire only	0	3	0
<i>Protest</i> of any bill of exchange, or promissory note, of any sum of money not amounting to 20 <i>l.</i> .....	0	2	0
Amounting to 20 <i>l.</i> and not 100 <i>l.</i> .....	0	3	0
Amounting to 100 and not 500 .....	0	5	0
Amounting to 500 or upwards .....	0	10	0
<i>Protest</i> of any other kind .....	0	5	0
And for every sheet or piece of paper, parchment, or vellum, upon which the same shall be written, after the first, a further progressive duty of .....	0	5	0
<i>Specification</i> of any invention, for which a patent shall be obtained .....	5	0	0
<i>Wills and Testaments</i> .—I. PROBATE of a will, and letters of administration with a will annexed, where the estate and effects shall be above the value of 20 <i>l.</i> and under 100 <i>l.</i>	0	10	0
£ 100 and under £ 200 .....	2	0	0
200 and under 300 .....	5	0	0
300 and under 450 .....	8	0	0

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£450	and under	£600.....	11	0	0
600	and under	800.....	15	0	0
800	and under	1,000.....	22	0	0
1,000	and under	1,500.....	30	0	0
1,500	and under	2,000.....	40	0	0
2,000	and under	3,000.....	50	0	0
3,000	and under	4,000.....	60	0	0
4,000	and under	5,000.....	80	0	0
5,000	and under	6,000.....	100	0	0
6,000	and under	7,000.....	120	0	0
7,000	and under	8,000.....	140	0	0
8,000	and under	9,000.....	160	0	0
9,000	and under	10,000.....	180	0	0
10,000	and under	12,000.....	200	0	0
12,000	and under	14,000.....	220	0	0
14,000	and under	16,000.....	250	0	0
16,000	and under	18,000.....	280	0	0
18,000	and under	20,000.....	310	0	0
20,000	and under	25,000.....	350	0	0
25,000	and under	30,000.....	400	0	0
30,000	and under	35,000.....	450	0	0
35,000	and under	40,000.....	525	0	0
40,000	and under	45,000.....	600	0	0
45,000	and under	50,000.....	675	0	0
50,000	and under	60,000.....	750	0	0
60,000	and under	70,000.....	900	0	0
70,000	and under	80,000.....	1,050	0	0
80,000	and under	90,000.....	1,200	0	0
90,000	and under	100,000.....	1,350	0	0

## II. LETTERS OF ADMINISTRATION, *without* a will annexed, where the estate and effects shall be above the value of 20*l*. and under 50*l*. .....

Of £50	and under	£100.....	1	0	0
100	and under	200.....	3	0	0
200	and under	300.....	8	0	0
300	and under	450.....	11	0	0
450	and under	600.....	15	0	0
600	and under	800.....	22	0	0
800	and under	1,000.....	30	0	0
1,000	and under	1,500.....	45	0	0

£1,500 and under	£2,000.....	60	0	0
2,000 and under	3,000.....	75	0	0
3,000 and under	4,000.....	90	0	0
4,000 and under	5,000.....	120	0	0
5,000 and under	6,000.....	150	0	0
6,000 and under	7,000.....	180	0	0
7,000 and under	8,000.....	210	0	0
8,000 and under	9,000.....	240	0	0
9,000 and under	10,000.....	270	0	0
10,000 and under	12,000.....	300	0	0
12,000 and under	14,000.....	330	0	0
14,000 and under	16,000.....	375	0	0
16,000 and under	18,000.....	420	0	0
18,000 and under	20,000.....	465	0	0
20,000 and under	25,000.....	525	0	0
25,000 and under	30,000.....	600	0	0
30,000 and under	35,000.....	675	0	0
35,000 and under	40,000.....	785	0	0
40,000 and under	45,000.....	900	0	0
45,000 and under	50,000.....	1,010	0	0
50,000 and under	60,000.....	1,125	0	0
60,000 and under	70,000.....	1,350	0	0
70,000 and under	80,000.....	1,575	0	0
80,000 and under	90,000.....	1,800	0	0
90,000 and under	100,000.....	2,025	0	0

**III. LEGACY-DUTY.**—Rates of duties payable out of real or personal estates, on legacies, annuities, and residues, value 20*l.* and upwards,—

To children of the deceased, or their descendants, or to the father, or mother, or other lineal ancestor of the deceased, (per cent.)	£1	0	0
To brothers and sisters of the deceased, or their descendants (per cent.).....	3	0	0
To brothers and sisters of the father or mother of the deceased, or their descendants (per cent.).....	5	0	0
To brothers and sisters of the grandfather or grandmother of the deceased, or their descendants (per cent.) .....	6	0	0
To any person in any other degree of collateral			

consanguinity, or to a stranger in blood to the deceased (per cent.) .....10 0 0  
 The husband or wife of the deceased is not chargeable with legacy-duty.

Allowances for *spoiled* stamps, or for deeds and instruments rendered *useless*, must be applied for within twelve calendar months; or, if the parties reside in London, or within ten miles thereof, within six calendar months.

**STATUTE-DUTY.** By several acts of parliament, the inhabitants and occupiers of lands and tenements are obliged to furnish horses, carts, and labourers, in certain proportions, for the repair of the highway, which is called *statute-duty*. By the 44 Geo. III. c. 52, persons liable to statute-duty may compound for the same, by paying such sums as the justices shall assign.

**STATUTE-MERCHANT**, a bond of record, by which the obligor conditions that if the debt be not paid at the day, execution may be awarded against his body, land, and goods.

**STATUTES** —See *Acts of Parliament*.

**STEAM-ENGINES.** In prosecutions for the abatement of nuisances from the furnaces of steam-engines, the Court is empowered, by the 1 & 2 Geo. IV. c. 41, to award costs to the prosecutors; and, in case of conviction, may make an order, without consent of the proprietor, for altering the construction of furnaces, so that the nuisance in future may be abated. But this power does not extend to the proprietors of engines *solely* employed in the working of mines or smelting of ores on or immediately adjoining the premises.

**STANDING ARMY.** The maintenance of a standing army, in time of peace, is illegal, by the 1 W. & M. c. 2, sec. 2. It is only, therefore, kept on foot by the annual Mutiny Act, of which see page 182.

**STERLING**, a term by which genuine English money is discriminated. It is derived from the *Easterlings*, or merchants of East Germany, who, by command of King John, manufactured a more pure and perfect coin. Hoveden writes it *esterling*.

**STEWES**, places set apart for the abode of prostitutes,



and formerly situate on the Bankside, in Southwark. Suppressed by Henry VIII. about the year 1546.

**STOCKJOBING.** By 7 Geo. II. c. 8, all stockjobbing not authorized by act of parliament, or by charter, shall be void, and the undertakings are declared nuisances. All *premiums* to deliver or receive, accept or refuse, any public stock, or share therein, and contracts in the nature of *wagers*, putts, and refusals relating to the value of the stock, shall be void; and the premiums returned, or may be recovered by action with double costs; and the persons entering into or executing any such contract shall forfeit 500*l.* No money shall be given to compound any difference, for not delivering or transferring stock, or not performing contracts; but the whole money agreed on is to be paid, and the stock transferred, on pain of 100*l.* But this act not to hinder lending money on stock, or contracts for re-delivering or transferring thereon, so as no premium be paid for the loan more than legal interest.

**STOPPAGE IN TRANSITU.** When goods have been consigned upon credit, and the consignee has become a bankrupt or insolvent before the delivery of the goods, the law, in order to prevent the loss that would happen to the consignor by the delivery of them, permits him, in many cases, to resume the possession, by countermanding the delivery, and before or at their arrival at the place of destination, to cause them to be delivered to himself or agent. The exercise of this right is termed a *stoppage in transitu*, or in *passage*, and embraces two principal considerations: 1. The circumstances under which goods are deemed to be *in transitu*; 2. By whom this right may be exercised.

With respect to the *first* consideration, it is a general rule that the passage of goods continues in all cases till there has been an actual delivery to the vendee; therefore, goods continue liable to the vendor's right of stoppage, not only while they remain in possession of the carrier, whether by land or water, but also in any place connected with the transmission and delivery of them to the consignee. So, if goods consigned are delivered to a wharfinger or packer, and he receive

them on the part of the vendee, to be forwarded to him accordingly, on the insolvency of the vendee, they are subject to be stopped by the consignor in the hands of the wharfinger or packer, even though the latter should have been appointed by the vendee.

The payment of part price of the goods does not affect the vendor's right of stoppage, for part payment only diminishes the vendor's lien to that amount on the goods detained. But where part of the goods sold by an entire contract has come into actual possession, the vendor's right to countermand is wholly at an end, and cannot be exercised over the residue, which may not have been delivered, 2 *Hen. Bl.* 504. Neither has the vendor any right of stoppage, if the vendee has exercised any act of ownership over them; as by tasting, sampling, paying warehouse rent, though at a place short of their ultimate destination, 4 *Esp.* 82. Even, if after goods are sold, they remain in the warehouse of the vendor, and he receive warehouse rent for them, this amounts to such a delivery of the goods to the vendee, as to put an end to the vendor's right to stop *in transitu*.

*II. By whom the right of Stoppage may be exercised.*

This right can only be exercised where the relation of vendor and vendee subsist between the consignor and consignee; it does not belong to a person who has only a *lien* upon the goods without any property in them. A carrier, to whom the balance of a general account is due, can only detain for the carriage of the particular goods in his possession. Nor is a mere surety for the price of the goods, such vendor as to exercise the right of stoppage *in transitu*, even though he may be entitled to a commission on the amount of the goods for which he may have been security. But where a correspondent abroad, in pursuance of orders from a merchant in this country, purchases goods on his *own* credit, and merely takes a commission on the price, in case of the insolvency of the consignee, he is considered the vendor, for stopping the goods *in transitu*; for there is no privity between the original owner and the insolvent.

It is not necessary that the vendor, to exercise the

right of stoppage, should *actually* take possession of the property consigned by corporal touch; he may put in his claim to the goods *in transitu* either verbally or in writing, and it will be equivalent in law to an actual stoppage, provided it be made before the transit has expired.

**SUBPŒNA** is a writ whereby the party is called to appear at the day and place assigned, that is, under a penalty of 100*l.* and it is the leading process in courts of equity to oblige the defendant to appear and answer; and, by 45 Geo. III. c. 92, the service of a subpoena on parties or witnesses in any part of the United Kingdom shall be valid, to compel an appearance in any other part, the expenses being tendered. A witness is allowed his necessary expenses of the journey, but is not in general entitled to remuneration for *loss of time*: though, in some instances, it is allowed to attorneys and medical practitioners. The expense of making scientific experiments, with a view to evidence, is not allowable, 3 B. & B. 72.

**SUBSISTENCE - MONEY** is the money paid to soldiers *weekly*; which is short of their *full* pay, because their clothes, accoutrements, &c. are to be accounted for. It is, likewise, the money advanced to officers till their accounts are made up, which is commonly once a year, when their arrears are paid up.

**SUFFRAGAN**, a vicar ordained by the bishop of the diocese to assist him in his spiritual duties; or one who supplies the place of the bishop.

**SUPERIOR COURTS.** These are the courts of Westminster, especially the Court of King's Bench and Common Pleas, which, in general, have a superintendence over the inferior courts.

**SURPLICE FEES** are ecclesiastical dues, payable to the clergy on marriages, churchings, christenings, and burials.

**SYNGRAPH**, a deed, bond, or writing, under the hand and seal of all the parties; and it was the custom for both the debtor and creditor in writings obligatory to write their names and the sum borrowed on a piece of paper, with the word **SYNGRAPHUS** in large letters in

the middle; which being cut through, one part of the paper was delivered to each party, for their better security.

## T

**TALLYMAN**, a person that sells or lends clothes, goods, or the like, to be paid for by so much a week.

**TANNER**. By 48 Geo. III. c. 60, no tanner shall carry on the business of a shoemaker, currier, leather-cutter, or other artificer, exercising the cutting or workings of leather, on pain of forfeiture of all the hides tanned by him while following such unlawful occupation, or the value thereof; to be recovered by any one who will sue, with full costs, and one moiety of the penalty.

**TENDER**, of money, or other satisfaction, is, in many cases, a bar to an action. A tender of bank notes is good, unless specially objected to at the time, 83 Rep. 554. So is a tender of foreign coin made current by proclamation. So is a tender of provincial bank notes, or a draft on a banker, unless objected to, *Peake*, 239. With respect to the *persons* to whom the tender should be made it is sufficient if it be to the creditor or any authorized agent. Tender to an attorney authorized to sue out a writ is good, *Douglas*, 623. A bailiff who makes a distress cannot delegate his authority; therefore a tender to *his agent* is insufficient. A tender to one of several creditors is a tender to all. By several modern statutes, particularly 11 Geo. II. c. 19, in case of irregularity in the method of *distraining*; 24 Geo. II. c. 24, in case of mistakes committed by justices of the peace; 28 Geo. III. c. 37, in case of error by custom-house officers; and 23 Geo. III. c. 70, in respect of mistakes by excise-officers, the party may tender sufficient amends to the party injured, and it will be a bar of all actions, whether he thinks proper to accept it or not.

**TENTHS**, see *First Fruits*.

**TERMS** are periods of the year in which the Courts sit for the administration of justice, and are four in number, Hilary, Easter, Trinity, and Michaelmas. *Michaelmas* term always begins on the 26th of November, and ends on the 28th of the same month; *Hilary* term always begins on the 23d of January, and ends on the 12th of

February; unless either of these four days fall on Sunday, and then the term begins or ends on the day following. *Easter* term begins always on the Wednesday after Easter Sunday, and ends on the Monday three weeks afterwards. *Trinity* term begins always on the Friday after Trinity Sunday, and ends on the Wednesday fortnight after it begins. Michaelmas and Hilary are *fixed* terms, and invariably begin on the same day every year; but Easter and Trinity are *moveable*, their commencement being regulated by the festival of Easter. Hilary and Trinity are called *issuable* terms, being the terms after which the judges go their circuits for the trial of causes wherein issues have been previously joined.

**TESTE**, signifying witnessed, and used in the last part of all writs, wherein the date is contained, which begins with these words, *teste meipso*, &c. if it be an *original* writ; or *teste* the lord chief justice, if *judicial*.

**THANE**, the title of those who attended the Anglo-Saxon kings in their courts, and who held their lands immediately of the Crown.

**TIDSMEN**, or **TIDE WAITERS**, are officers of the custom-house, appointed to watch or attend upon ships, till the customs are paid; so called, because they go aboard the ships at their arrival in the Thames, and come up with the tide, *Cowell*.

**TINEWALD**, the parliament, or annual convention of the people of the Isle of Man, *Cowell*.

**TIPSTAFFS**. Officers appointed by the marshal of the King's Bench to attend upon the judges with a kind of rod or staff tipped with silver, who take into their custody all prisoners either committed or turned over by the judges at their chambers.

**TOBACCO**. The culture of tobacco in England (not Ireland) is prohibited by statute, except in a medicinal garden to the amount of one half pole. Penalty 10*l.* a pole, beside forfeiture, 12 & 15 Car. II. c. 34. Adulterating tobacco with leaves, herbs, or other material, subjects to a penalty of 5*s.* for every pound, with forfeiture of leaves and utensils. Persons employed in such adulteration, or vending the same, may be imprisoned

six months, 1 Geo. I. c. 46. Persons cutting walnut-tree, hop, sycamore, or other leaves in *imitation* of tobacco forfeit 200*l.* 29 Geo. III. c. 68.

**TOWN** is the generic term for a city, borough, tithing, or vill. To be a town, it is not necessary it should be incorporated, nor send members to parliament, nor have the privilege of a market. And it has been held that wherever there is a constable, there is a township, 1. *T. R.* 376—See *City*.

**TRADE.** There is a difference between commerce and trade. The first relates to our dealings with foreign nations or our colonies abroad, the latter to our mutual dealings amongst ourselves at home.

**TRAVERSE** signifies to turn over or put off the trial to another session or assizes. Where a defendant is not in actual custody, he cannot be compelled to take his trial at the same court at which he pleads, but may traverse to the next assizes or sessions.

**TRIENNIAL ELECTIONS.** By 6 W. & M. c. 2, the utmost period allowed the same parliament to sit is three years; after the expiration of which, reckoning from the return of the first summons, parliament ceased to have a legal existence. But, by the 1 Geo. I. c. 38, under the pretext of guarding against the designs of the papists, and to prevent the expense and animosities occasioned by frequent elections, the term was prolonged to seven years.

**TRINITY HOUSE** is a kind of college, incorporated by charter, in 1514; re-incorporated and extended, in 1685, from thirteen to thirty-one brethren. The corporation, originally a company of pilots for the royal navy, consists, at present, of a master, deputy, four wardens, eight assistants, and seventeen brethren. Eleven of the thirty-one members are usually men of high station, and twenty experienced commanders of merchant ships; the master and deputy are chosen annually. The chief functions of the Trinity corporation consist in examining and licensing pilots, in erecting sea-marks and lighthouses, in superintending the navigation of the river Thames, and in the appointment of the harbour-masters, on which they have a veto.

**TROVER.** An action of trover lies for goods which one has found and refuses to restore to the owner; or if another has my goods, by delivery to him or otherwise, and he sells or uses them without my consent, this is a conversion for which trover lies; so, too, if he does not actually convert them, but refuses to deliver them to me on demand.

**TUB-MAN.** In the Court of Exchequer, two of the most experienced barristers, called the *post-man* and *tub-man*, (from the places in which they sit,) have a precedence in motions, 3 *Black*, 28.

**TURNPIKES.** The turnpike-roads are placed under the management and direction of certain bodies of trustees, who are usually named and appointed by the respective acts of parliament, which are occasionally passed for the purpose of making, repairing, and sustaining the particular roads therein specified: but the power of these statutes being confined to separate and distinct objects, it was thought expedient to pass some general laws, which should apply in common to all trustees and turnpike-roads in general throughout the kingdom. These general provisions are comprised in the 3 Geo. IV. c. 126, amended by 4 Geo. IV. c. 95, and 7 & 8 Geo. IV. c. 24, which acts determine the curvature of wheels, and reduce the toll on wheels having the fellies of greater breadth than four and a half inches; and which regulate nuisances on the highways, exemptions from toll, the repair of roads, and other matters incidental to the preservation and management of turnpikes.

Trustees or commissioners may alter the direction of any road over waste or common land without making any satisfaction, and also through any private lands, by tendering a satisfaction to the owner. But they are not allowed to deviate *more* than 100 yards from the present line of road, over any private grounds, without the consent of the owners in writing.

Trustees or commissioners may appoint meetings for the execution of any acts relative to the roads, but they are to defray their own expenses at such meetings, except 10s. per diem for the use of a room. This does not extend to meetings within five miles of the Royal Exchange, the allowance being 20s. for the use of a room.

*Exemptions from Toll.*—Horses or carriages attending or going to attend the king, or any of the royal family, or returning from such attendance. Horses and carriages conveying materials for roads and bridges, or manure (except lime, or rates imposed by local acts) or agricultural produce not sold, or for sale; and, also, horses employed in husbandry.

Persons going or returning from church or other place of religious worship, tolerated by law, on Sunday. But this exemption does not extend to any toll at any gate within five miles of the Royal Exchange in London, or within five miles of Westminster-hall, in the city of Westminster.

Persons going or returning from the funeral of any person who shall die and be buried within the parish.

Ministers attending their religious duty, or going or returning from visiting any sick parishioner, or other parochial duty; officers conveying vagrants or prisoners; officers of the army, or soldiers on duty; horses and carriages used by the corps of yeomanry; persons going or returning from the election of any knight of the shire.

No toll can be taken for any horse or carriage which shall only cross a turnpike road, or shall not pass above 100 yards thereon.

Post-horses having passed through any gate may return toll-free before nine in the morning of the following day.

Persons claiming an exemption from toll, who are not entitled thereto, are liable to a penalty not exceeding 5*l*.

*Penalties on Toll-collectors.*—Toll-collectors are required to inscribe their names in conspicuous characters on the front of their houses, and taking more or less than the toll, or refusing to give their names to persons demanding the same, after paying the toll, or obstructing or hindering any passenger in passing through any toll-gate, or using any scurrilous or abusive language to any traveller or passenger; in every such case the toll-collector is liable to a penalty not exceeding 5*l*. *A table of tolls*, in large and conspicuous characters, is to be put up by the trustees. By 7 & 8 Geo. IV. c. 24, s. 6, trustees of roads may direct lamps to be lighted up at toll-houses, and collectors or lessees of roads neglect-



ing so to do, are subject to a penalty of 20s. Persons damaging such lamps, or extinguishing the light, are subject to a penalty of 40s.

*Mile-stones* and direction posts are to be erected ; also, the names of towns and villages at the entrance thereto, and stones marking the boundaries of parishes. Penalty for injuring or defacing the same, not exceeding 10*l*.

*Nuisances*.—Persons riding on the foot-paths ; or killing, dressing, or scalding any cattle or swine on or near the sides of the road ; or gypsies erecting their tents or booths on or near the side of the road ; or any blacksmith suffering the light of his shop to shine on the road after twilight ; persons making bonfires, or letting off fireworks, or baiting bulls, or playing at football, cricket, or other game, on the road, or sides thereof ; persons leaving waggons, &c. without any person in the care of them, for longer time than necessary ; lastly, persons destroying or damaging any lamp or lamp-posts, shall, for every such offence, forfeit not exceeding 40s. over and above the damage occasioned thereby. Owners of lands adjoining turnpike-roads are to cut and trim their hedges to the height of six feet, and to lop the branches of trees, shrubs, or bushes adjacent. Penalty, after due complaint and notice, for every twenty-four feet of hedge 2s. and for every tree, bush, or shrub, 2*d*. But no person can be compelled to cut or prune any hedge except between the last day of September and the last day of March. By 7 & 8 Geo. IV. c. 30, destroying or injuring any turnpike-gate, toll-house, or weighing-machine, subjects to transportation, fine, or imprisonment.

*Names of Owners*.—The owner of every waggon, wain, cart, or such like carriage, is required to paint, on the right, or off side, his christian and surname and abode, at full length, in large legible characters, of not less than one inch in height. Penalty not exceeding 5*l*.

*Penalties on Drivers* —One driver may take charge of two carts, if drawn by only *one* horse each. But this does not extend to carts within ten miles of London or Westminster. No child *under* the age of thirteen to drive any cart. Penalty on the owner not exceeding 10s. Drivers of waggons, carts, &c. riding thereon

(except in case of such light carts as are usually driven with reins,) or wilfully being at such distance from the same that he cannot have any government of his horses; or driving any vehicle without the *owner's name*; or not keeping the *left* or near side of the road, shall, for every such offence, forfeit not exceeding 40*s.* or, if the owner, 5*l.* and, in default of payment, to be committed to the House of Correction for not exceeding one month. Drivers refusing to discover their names in any of these cases are liable to be imprisoned three months.

An important act, the 7 Geo. IV. c. 142, for improving the roads in the vicinity of the metropolis, north of the Thames, came into operation on the 1st of January of the present year, by which the powers of trustees of the roads there specified, and also the executions of the provisions of the general Turnpike Acts already mentioned, are vested in a general board of commissioners, consisting of the members of parliament for Middlesex, London, and Westminster, and thirty-two others, who are vested with entire power for the making, mending, widening, lighting, watching, and watering the roads within their jurisdiction. As the act is local in its operation it does not suit our plan more particularly to detail its numerous provisions; it appears to be the commencement of a more uniform and efficient system than that under which the highways and footpaths in the neighbourhood of London have been heretofore managed.

## U

**UNFUNDED DEBT.** A mass of floating debt, due by Government, chiefly under the form of exchequer-bills, navy-bills, and debentures, and which have been issued to meet any public exigence, for which no provision has been made, or the provision has proved insufficient, or not forthcoming at the time wanted.

**VACATION.** The time between the end of one term and the beginning of another, which begins the last day of every term as soon as the Court rises. There is also a vacation in the *spiritualities*, from the death of the bishop or other spiritual person until the appointment of another.

**VAGABOND.** A wandering beggar or idle person who has no fixed place of abode.—See *Vagrants*, p. 179.

**VALET** was anciently a name denoting young gentlemen of rank and family, but afterwards applied to those of lower degree, and is now used for a menial servant more particularly occupied about the person of his employer.

**VENIRE FACIAS.** A judicial writ, awarded to the sheriff, to summon a jury of the neighbourhood to try the cause at issue.

**VENUE** is the place or county whence a jury is summoned for the trial of causes. Some persons, as barristers and attorneys, are privileged to lay and keep the venue in Middlesex, or move it into that county, unless another defendant is joined with them. In actions of debt, assumpsit, trover, and the like, which may be laid in any county, the judges may alter the venue, if they believe there cannot be an impartial trial where the venue is laid. But, in criminal cases, by 21 Jac. I. c. 4, all informations on penal statutes must be laid in the county where the offences are committed.

**VERGERS.** Officers carrying white wands in courts of justice or in cathedrals.

**VESTRY.** A place adjoining to a church, where the vestments of the minister are kept; also a meeting at such place, to consult on the affairs of the church or parish. In general, if a parishioner be shut out of the vestry-room by the clerk of the vestry, and he make it appear that he has a right to come into the room, and to be present and vote in the vestry, action of the case lies as a remedy, *Mod. Ca in L & E.* 52, 354. By custom as well as statute, there may be *select vestries*, or a certain number of persons chosen to have the government of the parish, make rates, and audit the accounts of churchwardens.—See page 84.

**VICTUALLER.** A term applied in the South to common ale-house keepers.

**VI ET ARMIS** are words used in indictments to express the charge of a *forcible* and *violent* committing any crime or trespass.

**VILL, or VILLAGE,** is sometimes taken for a manor,

and sometimes for a parish or part of it. But a *vill* is most commonly an outpart or hamlet of a parish, consisting of a few houses separated from it. A manor may consist of several villages or one alone. Blackstone says, but the point is disputed by some, that *vill*, *tithing*, and *town* are of the same signification in law.

**VISITATION-BOOKS.** These were compiled when visitations were regularly made into every part of the kingdom to inquire into the state of families, and to register such marriages and descents as were verified to them upon oath. They contain the pedigrees and arms of the nobility and gentry of the kingdom, from the twenty-first year of Henry VIII. to the latter end of the seventeenth century, during which period the two provincial kings of arms, Clarencieux and Norroy, soon after their investiture in office, usually received a commission under the great seal, authorizing them to visit the several counties within their respective provinces, to "peruse and take knowledge, survey, and view, of all manner of arms, cognizances, crests, and other like devices, with the notes of the descents, pedigrees, and marriages, of all the nobility and gentry, therein throughout contained; and, also, to reprove, control, and make infamous, by proclamation, all such as shall unlawfully, and without just authority, usurp, or take any name or title of honour or dignity, as esquire or gentleman," &c. From these visitations entries were afterwards made in the books kept at the College of Heralds.

**VIVA VOCE**, an examination by parol in open court.

**VOIRE DIRE**, when a witness is suspected of partiality, he may, before he is examined, be sworn upon a *voire dire*, which is to declare whether he shall gain or lose by the matter in controversy.

## W

**WARRANT OF ATTORNEY** is a power given by a client to his attorney to appear and plead for him, or to suffer judgment to pass against him by confessing the action, by *Nil dicit, non sum informatus*, &c.

**WARREN** is a franchise or place privileged, by pre-

scription or grant from the king, for the keeping of beasts and fowls of the warren, which are hares and conies, partridges, pheasants, and some add quails, woodcocks, water-fowl, &c. *Terms de Ley*, 589.

**WEIGHTS AND MEASURES.** By the 5 Geo. IV. c. 74, which act, by the 6 Geo. IV. c. 12, commenced on the 1st of January, 1826, an attempt is made to introduce an uniformity of weights and measures throughout the United Kingdom. By this statute, an imperial standard yard, pound, gallon, and bushel, are fixed, and the principle laid down on which they may be renewed if lost or destroyed. Models and copies of these and their parts and multiples are to be deposited at the Chamberlain's office, Westminster, and sent to London, Edinburgh, Dublin, and other cities and places. The magistrates are to procure them for the use of their respective counties, and all contracts shall be governed by these standards, unless express agreement to the contrary: and if it be, unless the proportion of the local or special measure to the standard be specified in the agreement, such agreement is null and void.

**WERE.** Under the Anglo-Saxon laws the *were* was the *legal* value of a man's life, which varied according to his rank; and if human life were thus made to vary in value, it is no wonder that personal estimation should vary in the same way: thus the oath of a *twelve-hynd man* was equal to the oath of six *ceorls*. Besides the *were*, which was in some sort the legal protection of a man's life, there was a security afforded to the safety and peace of his house, called the *mund*, and this, like the *were*, varied in amount with the rank of the party. Neither the *mildness* of the Anglo-Saxon laws, nor the principle of the *were* seem to have extended to the case of *theft*; from the time of Athelstan, larceny to the value of 12*d.* was capital, and very severe punishments were inflicted still earlier for smaller offences.

**WIFE.** The abduction, or taking a man's wife either by fraud and persuasion or open violence, is an offence for which a remedy may be had, either by writ of ravishment or action of trespass. By 3 Edw. I. c. 13, the offender may be imprisoned two years, and be fined

at the pleasure of the king; so that both the king and husband may prosecute. The husband is also entitled to recover damages in an action on the case against such as *persuade* or *entice* his wife to live separate from him, without sufficient cause. The old law was so strict on this point, that if a man's wife missed her way on the road, it was not lawful for another man to take her into his house, unless she were benighted, and in danger of being lost or drowned; but a stranger might carry her behind him on horseback to market, or to a justice of peace for a warrant against her husband, or to the spiritual court to sue for a divorce.

WITTENA-GEMOTE, a convention or assembly of great men to advise and assist the king, answerable to our parliament, in the time of the Saxons; or, rather, an assembly of the whole nation. *Cowell.*

WOOLLENS. The 11 Geo. I. c. 24, fixes the length and breadth of broadcloth in the West Riding of York, and requires the millman to affix a seal of lead to the cloth, denoting the same, for which he is to receive 2d. for a whole cloth, and 1d. for half a cloth. Persons *stretching* the cloth over the measure of the leads are liable to a penalty. Searchers are to be appointed at the Easter quarter-sessions, and are sworn to a due execution of their office, under a penalty of 20l. The old law to compel people to bury in woollen is repealed by 54 Geo. III. c. 108.

WRIT, in general, is the king's precept in writing, under seal, issuing out of some court to the sheriff, or other person, and commanding something to be done touching a suit or action, or giving commission to have it done.

WRIT OF RIGHT, a judicial process to establish a claim to property against a possessory title, in which the demandant must allege some seisin of the lands and tenements in himself, or else in some person under whom he claims; and then derive the right from the person so seized to himself. Except the case of *Tooth v. Bagwell*, in 1826, there are few examples in the last century of prosecuting any real action for land by *writ of right*, or otherwise than by action of *trespass* or *ejectment*,

which are the usual modes of settling the title of lands. As to summoning and swearing the four knights in addition to the usual jury, see 3 *Moore*, 249, 1 *Taunt. & Brod.* 17. They may be summoned from the grand jury when present at the assizes.

## Y

**YEAR.** The space of a year is a well-known period, consisting of 365 days, for, though in bissextile, or leap-year, it consists of 366, yet, by statute of 21 Hen. III. the additional day in the leap-year, together with the preceding day, shall be accounted for one day only. Before 1752, the year commenced on the 25th of March, and the Julian calendar was used, and much inaccuracy and inconvenience resulted, which occasioned the introduction of the *New Stile*, by the 24 Geo. II. c. 23. which enacts that the 1st of January shall be reckoned the first day of the year, and throws out eleven days in that year, from the 2d of September to the 13th, with a saving of ancient customs, &c. Both *half years* and *quarters* are usually divided according to certain feasts and holidays, rather than a precise division of days; as, Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day. In these cases, such divisions of the year by the parties are regarded by the law, and, therefore, though a half-year's notice to quit is necessary to determine a tenancy from year to year, yet a notice served on the 29th of September to quit on the 25th of March, being half a year's notice according to the above division, is good, though it contain less than one hundred and eighty-two—namely, one hundred and seventy-eight days.

**YEAR AND A DAY** is a term that determines a right, or works a prescription in many cases by law; as in case of an estray, if the owner challenge it not within that time, it belongs to the lord; so of a wreck. *A year and a day* is given to prosecute appeals, and for actions in a writ of right, after entry or claim to avoid a fine; and if a person wounded, die in a year and a day, it makes the offender, in certain cases of homicide, guilty of murder, 3 *Inst.* 6 *Rep.* 107.

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**WITH AN ALPHABETICAL DIGEST OF**  
**IMPORTANT LAW CASES,**  
**FROM THE COMMENCEMENT OF**  
**MICHAELMAS TERM, A.D. 1827.**





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# APPENDIX.



## ABSTRACT

OF

## PUBLIC GENERAL STATUTES

PASSED

9 GEO. IV. ANNO 1828.

### PROMISES AND ENGAGEMENTS.

CAP. xiv.—*An Act for rendering a written Memorandum necessary to the Validity of certain Promises and Engagements.* [9th May, 1828.]

[Lord Tenterden's Act.] This statute makes some important alterations in the Statute of Limitations, in the law of promises, and in representations of character. After reciting 21 Jac. c. 16 and 10 Car. I. (Irish act), it enacts that, in action upon any simple contract, no acknowledgement or promise shall be sufficient to take a case out of these statutes, unless it be *in writing*, signed by the party chargeable thereby. Joint contractors, or executors or administrators of any contractor, not to be chargeable in respect of any written acknowledgement of his co-contractor; but this enactment is not to alter the effect of any payment of principal or interest made by any person whatsoever. s. 1.

Section 2 relates to pleas in abatement.

*Indorsement of Payment.*—No indorsement or memo-  
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random of any payment after the time appointed for the act to take effect, upon any promissory note, bill of exchange, or other writing, shall be deemed sufficient proof of payment so as to take the case out of the operation of the Statute of Limitations. s. 3.

*Set-off.*—The said acts and this act to apply to the case of any debt or simple contract alleged by way of set-off on the part of defendant, either by plea, notice, or otherwise. s. 4.

*Contracts of Infants.*—Confirmation, after full age, of promises or contracts made by an infant must, in order to sustain an action, be made by some writing signed by the party to be charged. s. 5.

*Representations of Character.*—No one to be liable for any representation of the character, conduct, credit, or ability of another, in order that the latter may obtain credit, money, or goods, unless such representation be made in writing, signed by the party to be charged. s. 6.

*Extension of Statute of Frauds.*—Reciting that 29 Car. II. c. 3, and 7 Will. III. c. 12 (Irish act), did not extend to certain executory contracts for the sale of goods, it is provided that these acts shall be extended to where goods are intended to be delivered at some future time, or where they may not be actually made, procured, fit, or ready to be delivered. s. 7.

The memorandums or agreements required by this act, exempted from stamp duty. ss. 8.

This act extends to England and Ireland, and commences January 1, 1829. ss. 9, 10.\*

#### RECORDS AND EVIDENCE.

CAP. XV.—*An Act to prevent a Failure of Justice by reason of Variances between Records and Writings produced in Evidence thereof.* [9th May, 1828.]

To avoid the expense and failure of justice incurred at trials by reason of variances produced in evidence and the setting forth on the record, it enacts when

\* For the alterations introduced by this act see *The Cabinet Lawyer*, under the heads Statute of Limitations, pp. 32 and 932; Infants, p. 118; Representation of Character, p. 119, and the Statute of Frauds, p. 237.

## CORPORATION AND TEST ACTS. 8

such variances shall appear between written and printed evidence and the record, the court may order the record to be forthwith amended on payment of costs; and the trial to proceed.

### CORPORATION AND TEST ACTS.

**CAP. xvii.**—*An Act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments.* [9th May, 1828.

So much of 13 Car. II. st. 2, c. 1. and 25 Car. II. c. 2. as imposes penalty or disability for omitting to take the Lord's Supper in the cases there mentioned is repealed. s. 1.

In lieu of which every person elected to any office of magistracy, place, trust, or employment relating to the government of any city, corporation, or borough in England shall, within one calendar month next before or upon his admission, make and subscribe the following declaration :—

“ I, A. B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, upon the true faith of a Christian, that I will never exercise any power, authority, or influence, which I may possess by virtue of the office of \_\_\_\_\_ to injure or weaken the Protestant church as it is by law established in England, or to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges to which such church, or the said bishops and clergy, are or may be by law entitled.” s. 2.

Declaration to be made before such persons as by the charter or usages of the corporation ought to administer the oath for the due execution of such office, or, in default of these, before two justices. s. 3. Omitting the declaration vacates the office. s. 4.

Officers under the crown, formerly required to qualify by taking the Lord's Supper, to make the declaration within six calendar months, either in the Court of Chancery, the King's Bench, or at the quarter-sessions of the county or place where the party resides. ss. 5, 6.

**Exemptions.**—No naval officer below the rank of rear-admiral; no military officer below the rank of major-general in the army or colonel in the militia; no com-

missioner of customs, excise, stamps, or taxes, or person under the said commissioner, or under the postmaster-general is required to make the declaration. Naval or military officers receiving any appointment while abroad, or within three months previous to leaving England, may make the declaration any time within six months after their return. s. 7.

Persons in the actual possession of offices at the time of passing this act having omitted to qualify as required by the acts of Car. II. are indemnified from penalty or disability and confirmed in their offices. s. 8.

The omission of persons to make the declaration not to affect others not privy thereto. s. 9.

#### CARDS AND DICE.

CAP. XVIII.—*An Act to repeal the Stamp Duties on Cards and Dice made in the United Kingdom, and to grant other Duties in lieu thereof; and to amend and consolidate the Acts relating to such Cards and Dice, and the Exportation thereof.* [9th May, 1828.]

All former acts, except as to arrears of duty and as to bonds entered into in pursuance of former acts, the conditions of which have not been performed, are repealed. An annual license-duty of 5s. to be paid by every maker of playing-cards and dice in the united kingdom. The duty on every pack of cards to be 1s. and to be denoted on the ace of spades. Every pair of dice to pay a duty of 20s. All pieces of ivory, bone, or other matter used in any game, with letters, figures, spots, or other marks, denoting any chance, to be adjudged dice, and if more than six chances are signified on any one piece, then such piece to be charged with the full duty of a pair of dice. Cards and dice not to be made in any part of Great Britain except the metropolis, nor in Ireland, except in Dublin and Cork, penalty 100l. Cards and dice to be enclosed in wrappers with such marks or device as the commissioners of stamps shall appoint. Before license can be had, bond must be given to the amount of 500l. for the payment of the duties, &c. Selling or exposing to sale any pack of cards not duly stamped subjects, if a licensed maker,

## CARDS AND DICE—PASSAGE VESSELS. 6.

to a penalty of 50*l.*; if not a licensed maker, 10*l.* Any person *having in his possession, or using, or permitting to be used* any pack of cards or dice not duly stamped, shall forfeit 5*l.* A like penalty is imposed for selling any waste cards, unless the corners be cut off and sold in parcels without cover or wrapper. Second-hand cards may be sold by any person, if sold without the wrapper, or jew, of a licensed maker, and in packs containing not more than fifty-two cards, including an ace of spades duly stamped, and enclosed in a wrapper with the words "Second-hand Cards" printed or written in distinct characters on the outside; penalty for selling second-hand cards in any other manner, 20*l.*

This act commenced July 5, 1828.

### PASSAGE-VESSELS TO NORTH AMERICA.

CAP. XXI.—*An Act to regulate the Carriage of Passengers in Merchants' Vessels from the United Kingdom to the Continent and Islands of North America.*

[23d May, 1828.

No ship to sail from the united kingdom or British isles to any place in his majesty's possessions in North America with more than three persons for every four tons of the registered burden of such ship, the master and crew being included; and no ship to carry passengers unless of the height of five feet and a half at least between decks; two children under fourteen, or three under nine, or one child under twelve months with its mother, to be computed as one person. s. 1. Good and wholesome provisions to be provided in the proportion of fifty gallons of pure water for every person on board, and fifty pounds of bread, biscuit, oatmeal, or bread-stuff for every passenger. s. 2. Ships having their full complement of passengers not to carry any part of their cargo or stores between decks. s. 3. Lists of passengers, their names, ages, professions, and destination to be delivered to the collector of customs. s. 4. Masters of ships compelling passengers to land at any other place than that agreed upon to forfeit 20*l.* or taking a greater number of passengers than allowed by law, or not providing the requisite provisions, or



stowing them between decks, or not furnishing true lists to the collector, to be guilty of a *misdemeanor*. ss. 5, 6. Bond to be given by the master of ships for the observance of the rules and provisions of the statute. s. 7. The act not to extend to post-office ships, nor to the Bahama islands, or the West Indies. ss. 8, 9.

[For the act regulating passage-vessels to Ireland see the article Ship Passengers in *The Cabinet Lawyer*, p. 556.]

#### PARLIAMENTARY ELECTIONS.

CAP. XXII — *An Act to consolidate and amend the Laws relating to the Trial of Controverted Elections or Returns of Members to serve in Parliament.*

[23d May, 1828.

By section 1 are repealed 10 Geo. III. c. 16; 11 Geo. III. c. 42; 14 Geo. III. c. 15; part of 25 Geo. III. c. 84; part of 28 Geo. III. c. 52; 32 Geo. III. c. 1; 34 Geo. III. c. 83; 36 Geo. III. c. 59; 42 Geo. III. c. 84; 47 Geo. III. c. 1; part of 47 Geo. III. c. 14, and 63 Geo. III. c. 71.

Upon a petition being presented to the House of Commons, complaining of an undue election or return, or that no return has been made, a time to be fixed for taking the same into consideration, and notice thereof given, by the Speaker, to the sitting members and the petitioners. s. 2. If petitioners do not attend within *one hour* of the time appointed, the order for taking the petition into consideration to be discharged, and the petition not to be further proceeded upon. s. 2. No petition to be proceeded upon unless subscribed by a voter or a candidate. s. 4. Within fourteen days after presentation of petition, the petitioners to enter into a recognizance in the sum of 1000*l.* with two sureties in 500*l.* each, or four sureties in 250*l.* each, for the payment of costs. s. 5. Names and additions of sureties to be delivered to the clerk of the House of Commons on the day the petition is presented, or the day after at farthest. s. 6. Recognizances to be entered into before the Speaker, and the sufficiency of the sureties to be determined by him. s. 7. Parties or sureties, living

forty miles from London, may enter into recognizances before a justice. s. 8. Petitions not to be withdrawn unless the member returned shall have vacated his seat, or some matter, verified on oath, have arisen since the presentment of the petition. s. 9. Voters, upon petition, may become parties to oppose or defend the return. s. 10. Where the seat becomes vacant, or the sitting member declines to defend his return before the petition is taken into consideration, notice to be sent, by the Speaker, to the returning officer, who shall affix a copy of it on the county hall, town hall, or parish church nearest to the place of election; and notice shall also be given in the London Gazette; and consideration of the petition adjourned, so that thirty days intervene between the appearance of the notice in the Gazette and the day on which the petition shall be taken into consideration. s. 11. Within thirty days after notice, persons claiming a right to vote may be admitted as parties to defend the return. s. 12. Members, having given notice of their intention not to defend their return, shall not be admitted parties in subsequent proceedings; and such members shall be restrained from sitting or voting on any question until the petition be decided upon. s. 13. Lists of votes intended to be objected to, to be delivered to the clerk of the House of Commons, and such list be open to the inspection of the parties. s. 14. Evidence on the validity of votes to be confined to the objections specified in the lists. s. 15. Order of the day for taking election petitions into consideration to have precedence of other business. s. 14. House to be counted, and, if one hundred members are present, the parties to be ordered to the bar, and the names of members to be put into six glasses, and drawn out alternately till thirty-three be drawn. ss. 15, 16. [Section 17 to 38 relate to proceedings before committee, and excuses, &c. for non-attendance of members.] Committees are empowered to send for and examine papers and records; and witnesses misbehaving may be committed to the custody of the serjeant-at-arms. s. 39. Committee to decide, and such decision to be final, except in certain cases. s. 40. When the merits of a petition depend on questions respecting the

right of election, or of choosing returning officer, the committee are to require statements in writing of such right, and report thereon. s. 50. Petitions of appeal against the judgment of the committee to be presented to the House within six months after a report has been made; otherwise the judgment to be deemed final. s. 51. Notice of time of taking petitions of appeal into consideration to be given in the London Gazette, and sent to the returning officer, and any person may be admitted to defend the right of election, &c. ss. 52, 53. When the petition is deemed *frivolous*, the costs to be recovered by the parties who opposed the petition from those who signed it; *vice versa* when the opposition to such petition is deemed frivolous. ss. 57, 58. When the petition is not opposed, the costs to be paid by the sitting member, or by such person as the House shall have admitted or directed to oppose the petition. s. 59. Application for costs to be made to the Speaker within three months after the determination of the merits of the petition; the bill of costs to be taxed, and, after demand made, they may be recovered by action. ss. 60–63. If petitioners neglect to pay the costs to witnesses within seven days after demand, or refuse to pay the other costs within six months, then recognizances shall be estreated. s. 65. If the sheriff or returning officer neglect or refuse to return the person duly elected, he may be sued by such person, and double damages and full costs of suit recovered; the action to be commenced within one year, or within six months after the conclusion of any proceedings in the House of Commons. s. 66. This act to commence on the last day of the last session of Parliament. s. 67.

#### BANKERS' BILLS AND NOTES.

CAP. XXIII.—*An Act to enable Bankers in England to issue certain Unstamped Promissory Notes and Bills of Exchange, upon payment of a Composition in lieu of the Stamp Duties thereon.* [19th June, 1828.

After reciting the expediency of allowing bankers to issue their notes and bills on *unstamped paper*, on payment of a composition in lieu of stamp duties, it enacts that,

from July 1, 1828, any banker in England, (except within the city of London or three miles thereof,) having first obtained a license, and given security by bond, may issue, on unstamped paper, promissory notes for £5 or upwards, payable to bearer on demand, or to order at not exceeding seven days after sight; and also to issue, on unstamped paper, bills of exchange, payable to order or demand, or at not exceeding seven days after sight, or twenty-one days after the date thereof: provided such bills of exchange be drawn upon a banker in the metropolis, or drawn by a banker at a place where he is licensed to issue unstamped notes and bills under the act, upon himself or partner, payable at any other place where he is licensed to issue unstamped paper. s. 1.

*Regulation of Licenses.*—Commissioners of stamps to grant licenses to issue unstamped notes and bills, charged with a stamp duty of £30 each license. s. 2. A separate license to be taken out for every place where such notes or bills may be issued; but, after taking out three licenses, all remaining towns or places will be included in the *fourth* license. s. 3. Licenses must specify the particulars required to be specified in licenses for the issue of promissory and re-issuable notes. s. 4. Commissioners may cancel licenses already taken out, and, in lieu, substitute for them licenses for the issue of unstamped paper. s. 5. Bankers, while licensed under this act, shall not issue, for the *first time*, notes on stamped paper. s. 6.

*Bond and Composition Duties.*—Before a license can be obtained, a bond [subject to the ordinary duty on bonds] must be given to the King, conditioning to keep an account of all unstamped notes and bills issued or drawn, specifying the value and dates of issuing; and in like manner an account of promissory notes cancelled and the dates of such cancelling; and of bills issued and paid and the date of payment: such accounts to be produced, when requested, to any officer of stamps; also to deliver in writing to the commissioners of stamps half-yearly, within fourteen days after January 1st and July 1st, an account, verified on oath before a justice, of the amount of all unstamped paper issued under this or

any former act, and in circulation on Saturday in every week for the half-year preceding, together with the average amount of such paper in circulation; also to pay, as a composition for the duties on such unstamped paper, issued or in circulation during the half-year, 3s. 6d. for every £100, and for the fractional part of every £100 of the said average amount. On performance of these conditions the bond to be void. s. 7.

*Period of Circulation.*—Every unstamped promissory note payable to the bearer on demand, shall, for the purpose of payment of duty, be deemed to be in circulation from the day of the issuing to the day of the cancelling, both days inclusive, excepting the period during which such note shall be in the hands of the banker who first issued the same, or by whom the same shall be expressed to be payable; and that every unstamped promissory note payable to order, and every unstamped bill of exchange, shall be deemed to be in circulation from the day of the issuing to the day of the payment, both days inclusive: provided, that every such promissory note payable to order, and bill of exchange, which shall be paid in less than seven days from the issuing, shall be included in the account of notes and bills in circulation on the Saturday next after the day of the issuing, as if the same were then actually in circulation. s. 8.

*Regulations on Bonds.*—Persons issuing unstamped paper to be the obligors in the bond, and each bond to be for £100 or upwards, according to the probable amount of the composition duties for one year; and bonds to be renewed in case of death, bankruptcy, or insolvency. s. 9. Fresh bonds to be given in case of the dissolution of partnership, or the accession of fresh partner; but not where the firm exceeds six in number. s. 10.

*Penalties.*—Persons neglecting to renew their bond, when forfeited, and as often as it may be required to be renewed, to forfeit 100l. s. 11. Post-dating any unstamped note or bill subjects to a penalty of 100l. s. 12. Persons issuing unstamped notes and bills, except in

accordance with the provisions of this act, not exempt from the penalties imposed by former statutes. s. 13. All penalties and forfeitures to be recovered for the use of the King, in the name of his attorney or solicitor general. s. 14.

Not to affect privileges of the Bank of England. s. 15.

*Allowance for Stamps.*—Section 16 provides that where any banker, taking out a license under this act, shall have stamps in his possession which will become useless, the commissioners may cancel such stamps, and make allowance for them.

STAMP ALLOWANCES.

CAP. xxvii.—*An Act to repeal the Allowances made to Stationers on the purchase of Stamps for Receipts at the Head-Office in London, and to grant an Allowance to Persons purchasing such Stamps to a certain amount of the Commissioners of Stamps, or of the Distributors of Stamps in Great Britain.* [19th June, 1828.

In lieu of allowances granted to stationers under 44 Geo. III. c. 98, and of all other allowances, there shall be made to every person who at one time shall buy of the commissioners of stamps, at their head office in London, stamps for receipts to the amount of 5*l.* or upwards, or who at one time shall buy of any distributor or sub-distributor of stamps in any other part of Great Britain, not being within the distance of ten miles from the head office, stamps for receipts to the amount of 1*l.* or upwards, an allowance of 7*l.* 10*s.* for every 100*l.* and so in proportion for any greater or less sum.

Commissioners not to charge for paper on which the stamps are impressed. s. 2.

Persons producing, at the head office, paper or parchment to be stamped for receipts to the amount of 5*l.* or upwards, on which any *special form* shall be printed, such form being applicable solely to the business of any one person or firm, the commissioners may grant the allowance of 7*l.* 10*s.* for every 100*l.* and so in proportion for any greater or less sum. s. 3.

*Penalties.*—Persons selling stamps, charging for the paper, or charging more than the stamp duty denoted

on the stamp, to forfeit 10*l.* s. 4. But not to prevent any charge for any bound book containing stamps for receipts, or for any folio sheet of paper containing not more than one stamp, or for any skin or piece of vellum or parchment whereon any stamp may be impressed. s. 5. Section 6 relieves from all pecuniary penalties incurred by giving unstamped receipts prior to the passing of this act.

#### OFFENCES AGAINST THE PERSON.

**CAP. XXXI.**—*An Act for consolidating and amending the Statutes in England relative to Offences against the Person.* [27th June, 1828.

[This is Lord Lansdowne's Act, and is a continuation of those reforms in the criminal law which have been successively incorporated into former editions of *The Cabinet Lawyer*. The reformatory statutes previously introduced by Mr. Peel related principally to offences against the property of individuals, and to the mode of criminal procedure; the act of Lord Lansdowne relates to offences against the person. Besides repealing a great variety of statutes, and simplifying and consolidating the enactments of others, the act of Lord Lansdowne makes some important changes in the character and description of offences, which changes it will be proper, before commencing our digest of the act itself, to recapitulate, so that the improvements introduced into our criminal administration may be apparent and intelligible.

1. *Petit treason*, as a distinctive offence, is abolished and in all respects assimilated to the crime of murder.
2. The provisions of Lord Ellenborough's act (43 Geo. III.), including only cases of shooting, or attempting to shoot, and stabbing, or cutting with sharp instruments, the new act extends to any attempt to *poison*, *drown*, *suffocate*, or *strangle*, or stab, cut, or wound, (even with a blunt instrument, as in Howard's case,) with intent to murder, which are capital felonies.
3. Concealment of the birth of a child, by the omission of a clause in a former statute, is made a misdemeanor, whether by a *married* or single woman.
4. By the substitution of the word "animal" for "beast," the crime of bestiality seems to be extended to any unnatural intercourse with a bird or reptile.
5. In trials for buggery, rape, or abusing a woman child, evidence of penetration, without actual emission, is deemed sufficient proof of carnal knowledge.
6. In the forcible abduction of

women it is now sufficient, without *actual marriage*, to detain any woman, from motives of lucre, *with intent* to marry or defile her, and is felony, transportable for life or seven years, or imprisonment with or without hard labour, for not exceeding four years. The abduction of any girl under the age of sixteen subjects to such fine and imprisonment as the court shall award; under 4 and 5 P. & M. c. 8, it was imprisonment only for two years or fine. 7 And lastly, a material improvement has been introduced by empowering two justices, in any *common assault* or battery, where the fines and costs do not exceed 5*l.* to adjudicate summarily, without the delay of proceeding by indictment.

Some minor changes have also been made in the law of bigamy, the arrest of clergymen, and the process against persons guilty of murder abroad; these changes will be seen from the abstract of the act, which we shall now subjoin.]

The first section repeals the whole or parts of fifty-six statutes passed at different periods from the 9 Hen. III. c. 26 to the 3 Geo. IV. c. 114, and fixes the commencement of the present act on July 1, 1828.

Persons guilty of *petit treason* to be treated in all respects as guilty of murder, whether principals or accessories. s. 2.

*Murder and Manslaughter.*—The provisions on murder and manslaughter are nearly the same as previously existed, and which have been described at pages 368-371 of *The Cabinet Lawyer*. The alterations relate to murder perpetrated abroad and to accessories. Persons guilty of murder as principals or accessories in any foreign land, may now be tried in any county the king shall appoint, and this without any previous examination, as formerly, before the king's council. Accessories after the fact to murder, instead of being capital felons, with benefit of clergy, are made punishable by transportation for life, or imprisonment, with or without hard labour, for any term not exceeding four years. ss. 3-10.

*Attempts to Murder.*—Administering *poison* or other destructive thing, or attempting to *drown, suffocate, or strangle*, shooting at, or attempting to discharge fire-arms, or unlawfully and maliciously stabbing, cutting,



or wounding with intent to murder, is felony, punishable with death. s. 11.

*Attempt to Maim.*—Unlawfully and maliciously shooting at, stabbing, cutting, or wounding any person with intent to maim, disfigure, disable, or do some other grievous bodily harm, or to resist the lawful apprehension or detainer of any offender, shall be felony, punishable with death; provided the cases would have been murder if death had ensued from the injury inflicted. s. 12.

*Attempt to procure Abortion.*—Using any poison or noxious thing; or any instrument, to procure the miscarriage of any woman *quick with child*, or counselling or aiding therein, is felony, punishable with death; the same offence as to a woman *not quick with child*, or proved to be such, is felony, punishable by transportation for not exceeding fourteen nor less than seven years, or imprisonment with or without hard labour not exceeding three years, to which imprisonment (if the court think fit) once, twice, or thrice public or private whipping may be superadded.

*Concealing Birth of a Child.*—Concealing the birth of a child by burial of the dead body or otherwise, is a misdemeanor, punishable with imprisonment for any term not exceeding two years; and it shall not be necessary to prove whether the child died before, at, or after its birth; provided, that if any woman tried for the murder of her child shall be acquitted, the jury may find, in case it shall so appear in evidence, that she was delivered of a child, and attempted to conceal the birth, upon which the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth. s. 14.

*Sodomy.*—Every person convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall suffer death as a felon. s. 15.

*Rape.*—Every person convicted of the crime of rape shall suffer death as a felon. s. 16.

*Abuse of Female Children.*—Unlawful and carnal knowledge of any girl under ten years of age is punishable with death; above ten and under twelve, with im-

prisonment with or without hard labour for such term as the court shall award. s. 17.

It shall not be necessary, in any of the four preceding cases, to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only. s. 18.

*Abduction of Women.*—Where any woman shall have any interest in any real or personal estate, or be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, *with intent* to marry or defile her, or to cause her to be married or defiled by any other person, every such offender and person aiding therein shall be liable to be transported for life, or not less than seven years, or to be imprisoned, with or without hard labour, for not exceeding four years. s. 19.

*Abduction of Girls.*—Unlawfully to take, or cause to be taken, any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful charge of her, subjects the offender to such punishment, by fine and imprisonment, or both, as the court shall award. s. 20.

*Child-Stealing.*—Stealing from its parent or guardian any child under the age of ten years is punishable by transportation for seven years, or imprisonment for not exceeding two years.

*Bigamy.*—If any person being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or elsewhere, every such offender and person aiding shall be liable to be transported for seven years, or imprisoned not exceeding two years; provided, that this shall not extend to any second marriage contracted out of England by any other than a subject of his majesty, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years

then last past, and shall not have been *known by such person to be living within that time*, or to any person whose former marriage shall have been declared void by the sentence of a competent jurisdiction. s. 22.

*Arresting Clergymen.*—Arresting a clergyman upon civil process during divine service, or going or returning therefrom, is punishable by such fine or imprisonment, or both, as the court shall award. s. 23.

*Assaults upon Persons.*—Assaulting any magistrate, officer, or other person lawfully authorised, while endeavouring to preserve any vessel in distress, or any goods wrecked, is punishable by transportation for seven years, or imprisonment for such term as the Court shall think fit. s. 24.

Assaults with intent to commit felony; assaults on peace or revenue officers, or to prevent the arrest of offenders, or in pursuance of conspiracy to raise wages, may be punished with imprisonment not exceeding two years; and, if the court think fit, fined, and required to find sureties to keep the peace. s. 25.

Assaults on any seaman, keelman, or caster, to prevent them from working; assaults with intent to obstruct the buying or selling of grain or flour, or its free conveyance, may be punished, on summary conviction before two justices, with imprisonment to hard labour, for not exceeding three calendar months. s. 26.

Persons committing any *common assault* or battery, may be compelled by two justices to pay fines, and costs not exceeding 5*l.* in the whole, or on nonpayment, may be imprisoned for not more than two calendar months. If the justices dismiss the complaint, they are to deliver a certificate, stating the fact of such dismissal, to the party against whom the complaint was preferred. s. 27. Such conviction or certificate shall be a bar to future proceedings. s. 28. When the justices shall deem any assault or battery a fit subject for prosecution by indictment, they may abstain from any adjudication, and deal with the case as they would have done before the passing of this act. And they are not to determine any case of assault or battery in which any question

shall arise as to any title to property, or as to any bankruptcy or insolvency, or any execution under process of any court of justice. s. 29.

*Leaving Seamen abroad.*—Master of a merchant vessel forcing a seaman on shore, or refusing to bring him home, guilty of misdemeanor. s. 30.

*Accessories.*—Every accessory *before the fact* to any felony punishable under this act, for whom no punishment has been before provided, shall be liable, at the discretion of the court, to be transported for not exceeding fourteen nor less than seven years, or to be imprisoned, with or without hard labour, for not exceeding three years. And every accessory *after the fact* to any felony under the act (except murder) shall be liable to be imprisoned for not exceeding two years. Persons counselling or aiding any misdemeanor under the act may be proceeded against as principals. s. 31.

Offences at sea under the act, within the jurisdiction of the Admiralty, deemed of the same nature, and punishable in like manner, as similar offences in England. s. 32.

Proceeding on offences punishable by summary conviction, s. 33. Summary convictions must be within three calendar months. s. 34. Form of convictions. s. 35. No conviction to be removed by certiorari to the superior courts. s. 36. Act not to affect the law of treason, or the revenue laws, or the 6 Geo. IV. relating to the combination of workmen. s. 37. Not to extend to Scotland or Ireland. s. 38.

## LAW OF EVIDENCE.

CAP. xxxii.—*An Act for amending the Law of Evidence in certain Cases.* [27th June, 1828,

[Lord Lansdowne's Act.] By the first section of this act, Quakers or Moravians may, instead of an oath, make their solemn affirmation, which shall be of the same effect, in all cases, *civil or criminal*. Wilfully and falsely making such affirmation subjects to the penalties of perjury.

In prosecutions for forgery, the *party whose name is*

then last past, and shall not have been *known by such person to be living within that time*, or to any person whose former marriage shall have been declared void by the sentence of a competent jurisdiction. s. 22.

*Arresting Clergymen.*—Arresting a clergyman upon civil process during divine service, or going or returning therefrom, is punishable by such fine or imprisonment, or both, as the court shall award. s. 23.

*Assaults upon Persons.*—Assaulting any magistrate, officer, or other person lawfully authorised, while endeavouring to preserve any vessel in distress, or any goods wrecked, is punishable by transportation for seven years, or imprisonment for such term as the Court shall think fit. s. 24.

Assaults with intent to commit felony; assaults on peace or revenue officers, or to prevent the arrest of offenders, or in pursuance of conspiracy to raise wages, may be punished with imprisonment not exceeding two years; and, if the court think fit, fined, and required to find sureties to keep the peace. s. 25.

Assaults on any seaman, keelman, or caster, to prevent them from working; assaults with intent to obstruct the buying or selling of grain or flour, or its free conveyance, may be punished, on summary conviction before two justices, with imprisonment to hard labour, for not exceeding three calendar months. s. 26.

Persons committing any *common assault* or battery, may be compelled by two justices to pay fines, and costs not exceeding 5*l.* in the whole, or on nonpayment, may be imprisoned for not more than two calendar months. If the justices dismiss the complaint, they are to deliver a certificate, stating the fact of such dismissal, to the party against whom the complaint was preferred. s. 27. Such conviction or certificate shall be a bar to future proceedings. s. 28. When the justices shall deem any assault or battery a fit subject for prosecution by indictment, they may abstain from any adjudication, and deal with the case as they would have done before the passing of this act. And they are not to determine any case of assault or battery in which any question

shall arise as to any title to property, or as to any bankruptcy or insolvency, or any execution under process of any court of justice. s. 29.

*Leaving Seamen abroad.*—Master of a merchant vessel forcing a seaman on shore, or refusing to bring him home, guilty of misdemeanor. s. 30.

*Accessories.*—Every accessory *before the fact* to any felony punishable under this act, for whom no punishment has been before provided, shall be liable, at the discretion of the court, to be transported for not exceeding fourteen nor less than seven years, or to be imprisoned, with or without hard labour, for not exceeding three years. And every accessory *after the fact* to any felony under the act (except murder) shall be liable to be imprisoned for not exceeding two years. Persons counselling or aiding any misdemeanor under the act may be proceeded against as principals. s. 31.

Offences at sea under the act, within the jurisdiction of the Admiralty, deemed of the same nature, and punishable in like manner, as similar offences in England. s. 32.

Proceeding on offences punishable by summary conviction, s. 33. Summary convictions must be within three calendar months. s. 34. Form of convictions. s. 35. No conviction to be removed by certiorari to the superior courts. s. 36. Act not to affect the law of treason, or the revenue laws, or the 6 Geo. IV. relating to the combination of workmen. s. 37. Not to extend to Scotland or Ireland. s. 38.

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In prosecutions for forgery, the *party whose name is*

*forged*, or is interested in the forged instrument, shall be a competent witness. s. 2.

Every punishment for felony not capital, after it has been endured, shall restore the competency of a witness as effectually as a pardon under the Great Seal. s. 3.

No conviction for misdemeanor (except perjury) shall render a party an incompetent witness after he has undergone the punishment to which he has been adjudged. s. 4.

#### COUNTY LUNATIC ASYLUMS.

*CAP. XI.—An Act to amend the Laws for the Erection and Regulation of County Lunatic Asylums, and more effectually to provide for the Care and Maintenance of Pauper and Criminal Lunatics, in England.*

[15th July, 1828.]

Repeals 17 Geo. II. c. 5. s. 20 & 21; 48 Geo. III. c. 96; 51 Geo. III. c. 79; 55 Geo. III. c. 46; 56 Geo. III. c. 117; 59 Geo. III. c. 127; and 5 Geo. IV. c. 71, and all asylums erected under these acts are in future to be regulated by the present act. s. 1. Sections from 1 to 35 relate to the duties of justices at quarter sessions, in the erection of county lunatic asylums, the purchase of lands, the appointment of officers, and the levying of rates, and would not be of general interest, nor would an abridgement of them be of utility, without the insertion of the forms and schedules to which they refer.

*Pauper Lunatics.*—Justices at petty sessions, held next after the 15th of August, may require overseers to make a return of insane persons chargeable to their respective parishes, specifying the name, sex, and age, of each, and whether dangerous or not: penalty for neglecting to make such return, 10*l.* Expenses of examining such insane persons by a physician, surgeon, or apothecary to be defrayed by the overseer out of the poor rates. s. 36. Overseers neglecting to give notice to a justice within the division, for seven days, of any insane person chargeable to forfeit not exceeding 10*l.* nor less than 40*s.* half to the informer and half to the county. s. 37.

When any poor person chargeable is deemed to be insane, one justice may require the overseer to bring such person before two justices, who, upon due examination, aided by a medical practitioner, may cause him to be sent to the asylum. Justices to make order for the payment of the charges of conveying and maintaining such person; and insane persons not to be removed without justices' order, unless cured. s. 38.

Visitors may deliver any pauper to his relatives or friends, upon their undertaking he shall be no longer chargeable. s. 40.

A medical practitioner, to be duly appointed at the charge of the parish, shall, with the consent of the overseers, visit eight times every year pauper lunatics, and report to the overseers the result of his examination. s. 41.

*Lunatics not Paupers.*—Upon its being made known to a justice that persons are wandering about, and deemed to be insane, *though not chargeable*, he may proceed as in case of persons chargeable, and make order for maintenance. But if the estates of such persons be sufficient, overseers may levy for their expenses. s. 44. Justices refusing to make an order for the removal of an insane person to an asylum, must give his reasons in writing. s. 46.

*Bastards of Lunatics.*—Bastards of lunatics to have the legal settlement of their mothers, not of the parish in which the asylum is situate. s. 49.

*Penalty on Officers.*—Officers of any county asylum, through neglect or connivance, suffering their inmates to be at large without an order of justices, or till discharged by visitors, shall forfeit not exceeding 40*l.* nor less than 40*s.*, half to the informer and half to the county. s. 52.

*Lunatics guilty of Offences.*—Where persons charged with offences are insane, justices to inquire into their settlement, and make order for their maintenance in such place of custody as one of his majesty's secretaries of state shall direct. s. 54. Persons convicted of offences becoming insane during imprisonment, may be



removed to a county asylum by order of one of the secretaries of state. s. 55.

Secretary of state for the home department may employ any person to inspect any county asylum, and report thereon. s. 57.

Nothing in the act to extend to Bethlem Hospital, and the act to commence August 1st, 1828.

#### PRIVATE MADHOUSES.

CAP. xli.—*An Act to regulate the Care and Treatment of Insane Persons in England.* [15th July, 1828.

From the commencement of this act, section 1 repeals 14 Geo. III. c. 49; 19 Geo. III. c. 15; and 26 Geo. III. c. 91.

*Commissioners in London and Middlesex.*—Secretary of State for the home department to appoint, annually, August 1, or within ten days after, fifteen commissioners during one year, for licensing and visiting all houses in London, Westminster, and seven miles thereof, and in the county of Middlesex, for the reception of *two or more insane persons*, of which commissioners five at least to be physicians; names of commissioners to be published in the London Gazette within ten days after their appointment; physicians, acting as commissioners, not to attend professionally any patient in houses so licensed, except in particular cases, and they are to receive 1*l.* for every hour employed in executing the duties of commissioners, exclusive of travelling expenses. s. 2. Vacancies to be filled up by home secretary; and an oath administered to each commissioner. ss. 3, 4. No person interested in any licensed house, or who has been interested during two years preceding, eligible to be a commissioner. s. 5. Treasurer and clerk to be appointed by Secretary of State, with reasonable salaries, exclusive of fees; and chairman of commissioners, on their first meeting, to administer an oath to the clerk for the faithful execution of his office. ss. 6, 7, 8. Five or more commissioners, two of whom shall not be physicians or surgeons, to meet at a place appointed by the home secretary on the first Wednesday in January, April, July,

and October in every year, to receive applications and grant licenses to whom they think fit. s. 9.

*Licenses in the Country.*—In all other parts of England, justices at quarter sessions may grant licenses to keep houses for the reception of insane persons in the same manner as the commissioners within their jurisdiction; but justices interested in such houses not to act. s. 10. Justices, at Michaelmas quarter sessions, to appoint three or more justices, with one or more physicians, surgeon, or apothecary to be visitors, the latter receiving such remuneration out of the county rates as the justices at quarter sessions shall direct: names of visitors to be published within seven days after appointment in some newspaper circulated in the county. s. 11. Clerk to be appointed by justices at quarter sessions, and to be sworn at the first meeting of the visitors. s. 12.

*Application, Charge, &c. of License.*—Notice of application for license, and plan of the house, with name and abode of the applicant must be given to the clerk of the commissioners; or, in the country, to the clerk of the peace of the county, fourteen days previous to their meeting. s. 13. Upon alterations of house, notice and amended plan to be given. s. 14. Licenses to be made out by the clerk, and renewed yearly; charge for license, exclusive of stamp, for every parish patient, 2s. 6d. and 10s. for every other insane person specified in the license as proposed to be received in the house; but for no license shall there be paid less than 15l. All licenses to be stamped with a 10s. stamp. s. 16. Licenses may be revoked by the home secretary, on representations made to him by five commissioners, or three visitors. s. 17. Commissioners or justices refusing to renew a license to give notice to the Secretary of State. s. 18. Keeping any house for the reception of insane persons, three calendar months after the commencement of this act, without a license, is a *misdemeanor*. s. 19.

*Times of Visitation.*—Houses to be visited at least four times a year. s. 20. Concealing any lunatic from examination of visitors, a *misdemeanor*. s. 21. Upon information, on oath, of mal-practices, a house may be visited at any hour of the night. s. 22. Witnesses may be sum-

moned, and, refusing to attend, subjects to a penalty of not more than 50*l.* nor less than 10*l.* s. 23. Minutes to be made at each visitation, and be transcribed by the clerk into a register, and an annual report sent to the Secretary of State. ss. 24-28.

*Certificates of Admission.*—Persons receiving into a licensed house a lunatic without a certificate, dated fourteen days previous, or without entering the name, abode, and occupation of the party bringing him, are guilty of a *misdemeanor*. s. 29. Every certificate to be signed by two medical practitioners, each being a physician, surgeon, or apothecary, who have personally visited and examined the patient; and shall state that such lunatic is a proper person to be confined, and the day on which he was examined; also the name and abode of the person under whose direction he was examined, and the degree of relationship or other connection subsisting between such person and the lunatic; also the name, age, residence, former occupation, and the asylum, if any, in which such patient may have been confined, and whether found lunatic under a chancery commission; medical practitioners, being proprietors of any house, or the regular professional attendant, not eligible to sign a certificate; and untruly stating any of the fore-mentioned particulars, or signing without having *personally* examined the patient, is a *misdemeanor*. s. 30.

*Pauper Lunatics.*—No parish pauper to be received into any house without an order of two justices, or an order signed by an overseer and the officiating clergyman of the parish, and also a certificate signed by one physician, surgeon, or apothecary, that such person is a proper person to be confined. s. 31.

The keeper of every house not giving to the clerk of the commissioners or visitors, within *seven days* after the admission of every patient, a copy of the order and certificate, to be guilty of a *misdemeanor*. s. 32. Notice of death or removal of a patient to be given within *three days*, or a *misdemeanor*. s. 33.

*Any person*, upon a reasonable application to a commissioner or justice, may ascertain whether a lunatic is

confined; and obtain a copy of the order and certificate of confinement, on the payment of 7s. to the clerk, for his trouble. s. 34.

Every house containing 100 patients to have a resident medical practitioner; or containing less than 100 to be visited twice weekly by a medical practitioner, s. 35. Persons by whose authority lunatics are confined shall visit, or appoint some one to visit for them once every six months. s. 36. Commissioners or visitors may liberate persons improperly confined. s. 37. Inquiries to be made whether religious worship is performed in houses, s. 38. Medical and other persons may be employed by the lord chancellor, &c. to inspect houses. s. 39.

No person to receive into his *exclusive* care, except he be a relative or appointed by the lord chancellor, under pain of being guilty of a misdemeanor, *any one insane person* without an order and certificate, and generally submitting to the regulations established for licensed houses. s. 40.

The act not to extend to public hospitals or institutions supported wholly or partly by voluntary contributions, except as to certificates of admission, to visitations appointed by the lord chancellor, and transmission of names for the annual report to the Home Secretary. s. 51.

The remaining sections of this Act refer to the form of convictions, the application of penalties, &c. It commenced after August 1, and is to continue in force for three years, and to the end of the next session of parliament.

EXCISE LAWS.

CAP. XLIV.—*An Act to provide for the Execution, throughout the United Kingdom, of the several Laws of Excise relating to Licenses and Survey on Tea, Coffee, Cocoa, Pepper, Tobacco, Snuff, Foreign and Colonial Spirits and Wine, notwithstanding the Transfer to the Customs of the Import Duties on any of such Commodities.*

[15th July, 1823.

The duties of excise on the importation of coffee,

cocoa, pepper, tobacco, snuff, foreign and colonial spirits, and wine having been transferred to the Customs, in 1825, and doubts having arisen as to the laws in force in respect of these articles, it is enacted that all acts relating to the revenue of excise prior to such transfer and not subsequently repealed, are still continued. But by section 5, so much of any acts as requires permits for the removal of *coffee* and *cocoa* is repealed.

#### HOTEL KEEPERS.

CAP. xlv. — *An Act to enable certain Hotel Keepers to be licensed to keep Hotels as Common Inns, Alehouses, and Victualling Houses, and to sell therein Beer and other Exciseable Liquors for the residue of the present Year.*

[15th July, 1828.]

Keepers of hotels for the temporary residence of guests, who, by selling beer or other exciseable articles, without being licensed to keep a common inn, alehouse, or victualling house, have incurred the penalties of the 35 Geo. III. c. 113, are discharged from such penalties on taking out the licenses next mentioned, s. 1.

Two or more justices or magistrates, *if they think fit*, may grant a license to any hotel keeper who has kept and used such hotel from January 1, 1828, or at any time between that day and the passing of this act, to keep such hotel as a common inn or alehouse for the residue of the present year, and till the time when the general licenses for that purpose are renewable; provided the hotel has been kept and used as such continually from January 1, 1828, to the passing of this act: and the commissioner, assistant-commissioner, collectors, and supervisors of excise may grant to persons so licensed by two justices a license to sell beer by retail, or cider, perry, or other exciseable liquor. Hotel keepers so licensed to be subject to the same regulations and forfeitures as persons who keep any common inn or alehouse. s. 2.

#### LICENSES TO PASSAGE VESSELS

CAP. xlvii. — *An Act for regulating the Retail of Exciseable Articles and Commodities to Passengers on board of*

*Passage Vessels from one part to another of the United Kingdom.* [15th July, 1828.

From 5th July, 1828, the master of any packet or vessel employed in carrying passengers from one part of the United Kingdom to another is to be licensed by the commissioners of excise to retail *foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco*; such license to be in force till the 5th of July following; and the master obtaining the license to produce a certificate to the commissioners of his nomination and approval by the owner of the vessel: the license is transferable by endorsement. s. 1.

Duty to be paid by the owners on obtaining such license 1*l.* s. 2.

Penalty for selling wines, &c. without a license, for every offence 10*l.* s. 3. The duties to be under the management of the commissioners of excise. s. 4. And the act is not to affect any regulations or penalties for the prevention of smuggling. s. 6.

## STAMP DUTIES.

CAP. xlix.—*An Act to amend the Laws in force relating to the Stamp-Duties on Sea Insurances, on Articles of Clerkship, on Certificates of Writers to the Signet, and of Conveyancers and others, on Licenses to Dealers in Gold and Silver Plate, and Pawnbrokers, on Drafts on Bankers, and on Licenses for Stage-coaches in Great Britain; and on Receipts in Ireland.*

*Sea Policies.*—Parchment or paper stamped, on which any policy of mutual insurance at sea has been engrossed, printed, or written, may be stamped with *additional stamps*, if not underwritten to an amount exceeding the sum warranted by the former stamp. s. 1.

*Articles of Clerkship.*—Articles of clerkship executed prior to 22d June, 1825, may be stamped before the last day of Hilary Term, 1829, on payment of the proper duty and the further sum of 5*l.* by way of penalty. s. 2. And any time before the last day of Hilary Term, 1829, affidavits relating to such articles of clerkship may be filed and articles registered. s. 3. Articles of clerkship in the courts of great sessions, &c. may be

stamped, on payment of the duty of 120*l.* for admission of the parties in the courts of Westminster. s. 4.

*Certificates in Scotland.*—Certificates to writers to the signet, or a solicitor, agent, or procurator in any of the courts in Scotland, to expire annually on the 31st of October. s. 5. Prescribes mode of issuing certificates to writers, &c. in Scotland. s. 6. Certificates in the city or shire of Edinburgh to be entered with officer of court of session; elsewhere with the sheriff or steward clerk; and officers refusing or neglecting to enter the certificate to forfeit 10*l.* s. 7. Certificates to determine on 31st of October. s. 8. Penalty for acting after 31st of October, 1828, without a certificate, or without entering it, or for delivering in a wrong place of residence, 50*l.* and disability to maintain any suit or recover fees. s. 9. Penalties under the act to be recovered in the court of exchequer in Scotland. s. 10.

*Conveyancers, Pawnbrokers, &c.*—Certificates to conveyancers, special pleaders, and draftsmen in England, granted before the 31st October, 1828, to cease on that day. s. 11. Plate and pawnbrokers' licenses to expire annually on 31st July. s. 12. Proportionate allowances to be made on certificates and licenses unexpired, but not where a new certificate or license under this act has not been taken out, nor unless the certificate or license in respect of which such allowance is claimed be delivered to a stamp officer before 5th April, 1829. ss. 13, 14.

*Drafts on Bankers.*—From the passing of this act, all drafts or orders for the payment of any sum of money to the bearer on demand, and drawn in any part of Great Britain, upon any banker, or person acting as banker, who shall reside or transact the business of a banker *within fifteen miles* of the place where such drafts or orders shall be issued, shall be exempted from any stamp duty; provided the place where such drafts or orders shall be issued shall be specified therein; and provided the same shall bear date on or before the day on which the same shall be issued; and provided the same do not direct the payment to be made by bills or promissory notes. s. 15.

*Stage-coaches.*—So much of 50 Geo. III. c. 48, as directs the names of *proprietors* of stage-coaches to be painted on the doors is repealed; but not to repeal any part of 25 Geo. III. c. 51, as to names of licensed persons being painted on the door, together with the name of place from which they set out and to which they are going. s. 16. So much of 7 Geo. IV. c. 33. as permits informations to be laid by *any person*, as to stage-coaches, is repealed. s. 17. Informations laid by any other person than an officer of stamps, for the recovery of any fine, penalty, or forfeiture *relating to the stamp duties*, may be quashed by the justice on payment of costs. s. 18.\*

*Penalties in Ireland.*—Penalties of 20*l.* and 50*l.* under 55 Geo. III. c. 100, as to receipts in Ireland reduced to 10*l.* s. 19. So much of 55 Geo. III. c. 100, as declared certain offences by clerks as to receipts to be misdemeanors, is repealed, and a penalty of 10*l.* substituted. s. 20.

POLLING AT ELECTIONS.

CAP. lix.—*An Act to regulate the Mode of taking the Poll at the Election of Members to serve in Parliament for Cities, Boroughs, and Ports in England and Wales.*  
[15th July, 1828.]

At every election of a member to serve in parliament for any *city, borough, town, or port*, in England or Wales where the electors exceed six hundred, the returning officer on being required by a candidate or his agent in writing shall divide the polling-place into compartments, with sufficient accommodation for a poll-clerk, agent, and check-clerk for each candidate, and a distinct avenue for the voters. If the usual place of polling does not afford space for such an arrangement, some other must be chosen, as near as possible, which will admit of such division into compartments. s. 1. All expenses of booths, poll-clerks, &c. to be defrayed by the candidates in equal portions. s. 2.

\* This, I apprehend, can apply only to penalties for infringement of the stamp-laws, not to informations laid by *any person* for overloading, or other practices endangering the persons of passengers.



To prevent delay in receiving votes, if any voter be objected to, his name only shall be entered by the poll-clerk, who shall proceed to receive the vote of the next person who shall offer to poll, and the disputed votes be referred to the returning officer or his assessor to decide in rotation on their validity. s. 3.

So much of 25 Geo. III. c. 84, as allows the poll to continue open fifteen days is repealed, and in lieu it is enacted that no poll for any *city, borough, town, or port*, shall continue longer than *eight days* at most (Sundays excepted), and if it continue till the eighth day, then to be finally closed at or before three o'clock in the afternoon, ss. 4, 5.

Returning officer not to make proclamation of return till he has decided on the doubtful votes, but the time allowed for deciding on doubtful votes not to continue longer than three o'clock in the afternoon of the third day following the final close of the poll. s. 6.

This act commenced July 5th, 1828. It does not extend to Scotland or Ireland, nor to the cities of London or Westminster. s. 7.

#### CORN LAWS.

CAP. LX.—*An Act to amend the Laws relating to the Importation of Corn.* [15th July, 1828.]

The former acts regulating the importation of foreign corn, and the mode of taking the average prices of British corn, namely the 55 Geo. III. c. 26, the 3 Geo. IV. c. 60, and 7 & 8 Geo. IV. c. 58, are repealed, and also so much of 6 Geo. IV. c. 111, as imposes duties on the import of buck-wheat and Indian corn. ss. 1, 2.

By s. 3, the following duties, regulated according to the average prices of British corn, as made up and published by law, is imposed on the importation of corn, grain, meal, and flour, the produce of any foreign country, or of any British possession out of Europe.

#### TABLE OF DUTIES.

*If imported from any Foreign Country—*

	£	s.	d.
WHEAT, the average price being, in the British market,			
6s. and under 6s. the quarter.....	1	4	9

	s.	d.
63s. and under 64s. the quarter.....	1	3 8
64s. and under 65s. the quarter.....	1	2 8
65s. and under 66s. the quarter.....	1	1 8
66s. and under 67s. the quarter.....	1	0 8
67s. and under 68s. the quarter.....	0	18 8
68s. and under 69s. the quarter.....	0	16 8
69s. and under 70s. the quarter.....	0	15 8
70s. and under 71s. the quarter.....	0	14 8
71s. and under 72s. the quarter.....	0	6 8
72s. and under 73s. the quarter.....	0	2 8
at or above 73s. the quarter.....	0	1 0
under 62s. and not under 61s. the quarter .....	1	5 8
And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 61s. such duty shall be increased by one shilling.		
BARLEY, the average price 33s. and under 34s. the quarter .....	0	12 4
And in respect of every integral shilling by which such price shall be above 33s. such duty shall be decreased by 1s. 6d. until such price shall be 41s.		
..... Whenever such price shall be at or above 41s. the quarter.....	0	1 0
..... Whenever such price shall be under 33s. and not under 32s. the duty shall be for every quarter .....	0	13 10
And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 32s. such duty shall be increased by 1s. 6d.		
OATS, the average price 25s. and under 26s. the quarter .....	0	9 3
And in respect of every integral shilling by which such price shall be above 25s. such duty shall be decreased by 1s. 6d. until such price shall be 31s.		
..... Whenever such price shall be at or above 31s. the quarter.....	0	1 0
..... Whenever such price shall be under 25s. and not under 24s. the duty shall be for every quarter ....	0	10 9
And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 24s. such duty shall be increased by 1s. 6d.		
RYE, PEASE, and BEANS, the average price 36s. and under 37s. the quarter.....	0	15 6
And in respect of every integral shilling by which such price shall be above 36s. such duty shall be decreased by 1s. 6d. until such price shall be 46s.		
..... Whenever such price shall be at or above 46s. the quarter.....	0	1 0
..... Whenever such price shall be under 36s. and not under 35s. the quarter.....	0	16 9
And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 35s. such duty shall be increased by 1s. 6d.		
WHEAT MEAL and FLOUR:....		
..... For every barrel, being 196 pounds:....a duty equal in amount to the duty payable on 39½ gallons of Wheat.		
OATMEAL:....		
..... For every quantity of 161½ pounds:....a duty equal		

in amount to the duty payable on a quarter of Oats.

**MAIZE or INDIAN CORN, BUCK WHEAT, BEER or BIGG:....**

..... For every quarter:....a duty equal in amount to the duty payable on a quarter of Barley.

*If the Produce of and imported from any British Possession in North America, or elsewhere out of Europe:—*

<b>WHEAT:....</b>	£	s.	d.
..... For every quarter until the price of British Wheat shall be 67s. the quarter.....	0	5	0
..... Whenever such price shall be at or above 67s. the quarter.....	0	0	6
<b>BARLEY:....</b>			
..... For every quarter until the price of British Barley shall be 34s. the quarter.....	0	2	6
..... Whenever such price shall be at or above 34s. the quarter.....	0	0	6
<b>OATS:....</b>			
..... For every quarter until the price of British Oats shall be 25s. the quarter.....	0	2	0
..... Whenever such price shall be at or above 25s. the quarter.....	0	0	0
<b>RYE, PEASE, and BEANS:....</b>			
..... For every quarter until the price of British Rye, or of Peas, or Beans, shall be 41s.....	0	3	0
..... Whenever such price shall be at or above 41s. the quarter.....	0	0	6
<b>WHEAT MEAL and FLOUR:....</b>			
..... For every barrel, being 196 pounds:....a duty equal in amount to the duty payable on 38½ gallons of Wheat.			
<b>OATMEAL:....</b>			
..... For every quantity of 181½ pounds:....a duty equal in amount to the duty payable on a quarter of Oats.			
<b>MAIZE or INDIAN CORN, BUCK WHEAT, BEER, or BIGG:....</b>			
..... For every quarter:....a duty equal in amount to the duty payable on a quarter of Barley.			

**British Colonial Corn.**—No corn, grain, meal, or flour to be shipped from any British possession out of Europe, as being the produce of such possession, until the owner or shipper shall have made, before an officer of customs, a declaration in writing, specifying the quantity of each sort, and the place of produce; nor till he shall have obtained from the officer of customs a certificate of the quantity so shipped. A copy of such declaration and the certificate to be delivered to an officer of customs at

the place of importation, before such British colonial corn can be entered for home consumption; and any false statement as to quantity or place of produce subjects to a penalty of 100*l.* and forfeiture of the colonial produce. s. 4.

*Malt and ground Corn.*—Prohibits to import into the United Kingdom, for consumption there, any malt, or to import, for consumption, into Great Britain, any corn ground, except wheat meal, wheat flour, and oatmeal; or to import, for consumption, into Ireland, any corn ground: any such article imported shall be forfeited. s. 5.

*Monthly Accounts of Importation.*—The commissioners of customs shall, once in each month, cause to be published, in the London Gazette, an account of the total quantity of each sort of the corn, grain, meal, and flour imported into the United Kingdom; and also an account of the total quantity of each sort upon which the duties of importation have been paid during the calendar month next preceding; together with an account of the total quantity of each sort remaining in warehouse at the end of such next preceding calendar month. s. 6.

If any foreign state subject the vessels, manufactures, or produce of the British dominions to higher duties or charges than are levied on other countries, or shall not allow similar bounties and drawbacks, his Majesty in council may prohibit all importation of corn and flour from such foreign state. s. 7.

*Weekly Returns to be made.*—Weekly returns of the purchases and sales of British corn to be made in the following cities and towns:—

London	Chichester	Huntingdon
Uxbridge	Guildford	Hadleigh
Hertford	Lewes	Stowmarket
Royston	Rye	Bury St. Edmunds
Chelmsford	Bedford	Beccles
Colchester	Windsor	Bungay
Rumford	Aylesbury	Lowestoft
Maidstone	Ipswich	Cambridge
Canterbury	Woodbridge	Ely
Dartford	Sudbury	Wisbeach

Norwich	Durham	Tetbury
Yarmouth	Stockton	Stow-on-the-Wold
Lynn	Darlington	Tewkesbury
Thetford	Sunderland	Bristol
Watton	Barnard Castle	Taunton
Diss	Walsingham	Wells
East Dereham	Belford	Bridgewater
Harleston	Hexham	Frome
Holt	Newcastle-upon-	Chard
Aylesham	Tyne	Monmouth
Fakenham	Morpeth	Abergavenny
North Walsham	Alnwick	Chepstow
Lincoln	Berwick-upon-	Pont-y-Pool
Gainsborough	Tweed	Exeter
Glanford Bridge	Carlisle	Barnstaple
Lowth	Whitehaven	Plymouth
Boston	Cockermouth	Totness
Sleaford	Penrith	Tavistock
Stamford	Egremont	Kingsbridge
Spalding	Appleby	Truro
Derby	Kirkby-in-Kendal	Bodmin
Northampton	Liverpool	Launceston
Leicester	Ulverston	Redruth
Nottingham	Lancaster	Helstone
Worcester	Preston	St. Austel
Coventry	Wigan	Blandford
Reading	Warrington	Bridport
Oxford	Manchester	Dorchester
Wakefield	Bolton	Sherbourne
Warminster	Chester	Shaston
Birmingham	Nantwich	Wareham
Leeds	Middlewich	Winchester
Newark	Four Lane Ends	Andover
York	Denbigh	Basingstoke
Bridlington	Wrexham	Fareham
Beverley	Carnarvon	Havant
Hewden	Haverford West	Newport
Sheffield	Carmarthen	Ringwood
Hull	Cardiff	Southampton
Whitby	Gloucester	Portsmouth
New Malton	Cirencester	

Inspectors of corn-returns to be appointed in each of these places ; and his Majesty to appoint a comptroller of corn-returns. ss. 8, 9, 10, 11, 12.

*Inspector in City of London.*—The lord mayor and aldermen to appoint an inspector of corn-returns for the city, with the power of removal on proper cause: the office not to be executed by deputy, unless in sickness or temporary incapacity, when a deputy may be appointed by the lord mayor and aldermen. ss. 13, 14. No miller, malster, or cornfactor, or merchant, clerk, or agent engaged in the corn trade for six months preceding, qualified to be an inspector or deputy ; and an inspector or deputy entering in such vocations to be removed from office and disqualified. s. 15. Sections 16 and 17 prescribe the oath of the inspector, and that the appointment shall be enrolled at the next sessions of the peace for the city.

Every dealer in corn in the city of London, or within five miles of the Royal Exchange, before carrying on business, is to deliver a declaration in writing to the lord mayor, or one of the aldermen, in the following words :—

“ I, A. B. do declare, That the returns to be by me made, conformably to an act passed in the ninth year of the reign of King George the Fourth, intituled [*here set forth the title of this act*] of the quantities and prices of British corn which henceforth shall be by or for me sold or delivered, shall, to the best of my knowledge and belief, contain the whole quantity, and no more, of the corn *bona fide* sold and delivered by or for me within the periods to which such returns respectively shall refer, with the prices of such corn, and the names of the buyers respectively, and of the persons for whom such corn shall have been sold by me respectively ; and to the best of my judgment, the said returns shall in all respects be conformable to the provisions of the said act.”

The declaration to be subscribed by the person making the same, and a certificate thereof delivered by the lord mayor or alderman to the inspector for the city. s. 18. Every cornfactor to make a weekly return, on Wednesday, to the inspector, signed with his name, comprising a statement of the quantities of corn he has sold, the prices, names of buyers, and persons for whom sold. s. 19.

*Inspectors for the Country.*—Inspectors for the cities and towns above mentioned are to be appointed by the

justices of the counties or ridings in which they are situate; or if having an exempt jurisdiction, by the mayor or other chief officer and the justices assembled at quarter sessions for the city or town. ss. 20, 21. No person to be inspector in the country who has been engaged in the corn trade within *twelve months* preceding. s. 22. Sections 23 to 27 refer to the oaths to be taken by the inspectors, and the declarations and returns to be made by corndealers, which being similar to those for the city of London need not be inserted.

No inspector in London or in the country is to include returns until he has ascertained the persons making them have made the declaration. s. 28.

*Average Prices to be published.*—Every inspector is weekly to transmit to the comptroller of corn returns a statement of the quantities and prices of corn sold in his respective district; from these returns the average prices of all British corn, by which the rate of the duties are to be regulated, shall be made up in manner following: the comptroller shall on Thursday in each week, from the returns received by him during the week next preceding, ending on and including the Saturday in such preceding week, add together the total quantities of each sort of British corn respectively appearing by such returns to have been sold, and the total prices for which the same shall appear to have been sold, and shall divide the amount of such total prices by the amount of such quantities of each sort of British corn, and the sum produced shall be added to the sums in like manner produced in the five weeks immediately preceding the same, and the amount of such sums so added shall be divided by six, and the sum given shall be deemed the aggregate average price of each sort of British corn respectively; and the comptroller shall cause such aggregate weekly averages to be published in the next succeeding Gazette, and on Thursday in each week transmit a certificate of such aggregate average prices to the collector or other chief officer of the customs at each of the several ports of the United Kingdom; and the rate and amount of the duties to be paid under the provisions of this act shall be regulated at each of the ports of

the United Kingdom by the aggregate average prices of British corn at the time of the entry for home consumption of any corn, grain, meal, or flour, chargeable with any such duty, as such aggregate average prices shall appear and be stated in the last of such certificates which shall have been received by the officer of customs at such port. ss. 29, 30.

Sections 31 to 38 relate to the duties of the comptroller, and the power to omit in the averages the returns from any city or town suspected to be fraudulent. Weekly returns of prices may also be obtained by an order of privy council from other places than those mentioned; but such returns not to be admitted into the averages made up for regulating the duties.

Every inspector to put up in the market-place, or, if no market-place, some other conspicuous place, a copy of the last return made by him to the comptroller, omitting the names of the parties who have sold or bought the corn. s. 39.

Salary of the inspector for city of London not to exceed 300*l.* of each inspector for the country not to exceed 50*l.* and to be paid out of the duties of customs or excise. ss. 40, 41.

*Penalties.*—Persons omitting to make the declaration to forfeit 20*l.* for every calendar month; or omitting to make the returns of prices, &c. 20*l.* s. 42. and making any false or fraudulent statement in such returns is a misdemeanor. s. 46.

Nothing in the act to affect the practice of measuring in the city of London by sworn meters, nor its privileges as to any tolls or dues. s. 47.

[The remaining sections of the Act not abstracted, namely, 43, 44, 45, and 49, refer entirely to the recovery of the penalties and the limitation of actions.]

## PUBLICANS' LICENSES.

CAP. lxi.—*An Act to regulate the granting of Licenses to Keepers of Inns, Alehouses, and Victualling Houses in England.* [15th July, 1828.]

After declaring the expediency of reducing the laws relative to licensing into one statute, it enacts that there



shall be yearly held in county divisions, cities, and towns, a special session of justices, to be called the "*General Annual Licensing Meeting*," for the purpose of granting licenses; such meetings to be held in the counties of Middlesex and Surrey within the first ten days of the month of March, and in every other county on some day between the 20th of August and 14th of September. s. 1.

*Notice of General Meeting.*—Within every division twenty-one days before the annual licensing meeting a petty session of justices to be held, a majority of whom shall fix the day and hour for holding the general annual meeting, and shall direct a precept to the high constable, requiring him, within five days after the receipt thereof, to order the petty constables to affix on the door of the church, chapel, or other public place in their districts a notice of such annual meeting, and give to or leave at the dwelling-house of each justice acting for the division, and of each person keeping an inn, or who shall have given notice of his intention to apply for a license to keep an inn, a copy of such notice. s. 2. The annual meeting may be adjourned; but the adjourned meeting shall not be held on any of the five days next following the adjournment, and every adjournment to be held in the month of March in Middlesex and Surrey, and in August or September in every other county. s. 3.

*Sessions for transfer of Licenses.*—At the quarter-sessions held at Michaelmas next after passing of this act and at the annual meeting in every subsequent year, the justices to appoint not less than four, nor more than eight special sessions, to be held as near as possible at equi-distant periods, for the purpose of transferring licenses. s. 4. Notice of holding any adjourned annual meeting, or of any special session for the transfer of licenses to be given in the same manner and to the same parties as mentioned in the second section. s. 5.

*Justices disqualified.*—No justice concerned in the trade of a common brewer, distiller, maker of malt for sale, or retailer of malt, or any exciseable liquor, shall act or be present at any annual licensing meeting, or

adjournment, or special session for transferring licenses, or take part in the decision, or adjudication upon any application for a license, or upon an appeal; nor in the case of licensing any house of which he is owner, or agent to the owner, or of any house belonging to any common brewer, maker of malt, &c. to whom he shall be, either by blood or marriage, the father, son, or brother, or with whom he shall be partner in any *other trade*: in any of these cases knowingly or wilfully to act, subjects to a penalty of 100*l.* But disqualification does not arise where a justice, having no *beneficial interest* in a house licensed or about to be licensed, holds only the legal estate therein as trustee. s. 6.

When in any liberty, city, or town two qualified justices do not attend, the county justices may act. s. 7. These powers given to the county justices not to extend to the Cinque Ports. s. 8.

Questions respecting licenses to be determined, and licenses to be signed, by a majority of the justices at the meeting. s. 9.

*Application for a License.*—Persons intending to apply for a license to a house *not before licensed* to affix a notice on the door of such house, and on the door of the church or chapel of the parish, and where there shall be no church or chapel, on some other public and conspicuous place within the parish, on three several Sundays, between the 1st of January and the last day of February in the counties of Middlesex and Surrey, and elsewhere between the 1st of June and the last day of July, at some time between the hours of ten in the forenoon and of four in the afternoon, and shall serve a copy of such notice upon one of the overseers of the poor, and upon one of the constables or peace-officers of the parish, within the month of February in the counties of Middlesex and Surrey, and elsewhere within the month of July prior to the annual meeting; such notice to be in a legible hand or printed and signed by the applicant, and according to the following form:—

*To the Overseers of the Poor and the Constables of the Parish of*  
*and to all whom it may concern:*

I, A. B., [state the trade or occupation,] now residing at

in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_  
 and for six months last past having resided at \_\_\_\_\_ in the  
 parish of \_\_\_\_\_ [or in the several parishes of \_\_\_\_\_],  
 in the county of \_\_\_\_\_ [or in the counties of \_\_\_\_\_],  
 do hereby give notice, That [if application is intended to be made to a  
 Special Session, here state the cause for such application] it is my inten-  
 tion to apply at the General Annual Licensing Meeting [or at the  
 Special Session] to be holden at \_\_\_\_\_ on the  
 day of \_\_\_\_\_ next ensuing, for a license to sell exciseable  
 liquors by retail, to be drunk or consumed in the house or premises  
 thereunto belonging, situate at [here describe the house intended to be  
 opened, specifying the situation of it, the person of whom rented, the  
 present or late occupier, whether kept or used as an inn, alehouse, or  
 victualling-house within the three years preceding, and if so, by whom  
 and under what sign], and which I intend to keep as an Inn, Ale-  
 house, or Victualling House.  
 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_  
 one thousand eight hundred and \_\_\_\_\_ . s. 10.

**Notice to transfer License.**—Persons desirous of trans-  
 ferring a license and intending to apply to the next  
 special sessions shall, five days previous, serve a notice  
 on one of the overseers and one of the constables of the  
 parish in the following form:—

*To the Overseers of the Poor and the Constables of the Parish of \_\_\_\_\_ of the County of \_\_\_\_\_, and to all whom*

*it may concern:*

I, A. B., [or We, the executors, &c. &c. of the late A. B.] Vic-  
 tualler, being authorized by virtue of the License granted to me [or  
 him, or her] at the General Annual Licensing Meeting [or Special  
 Session] held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_  
 one thousand eight hundred and \_\_\_\_\_ to sell exciseable liquor  
 by retail, to be drunk or consumed in the house or premises there-  
 unto belonging, situate at [here describe the situation of the house], and  
 commonly known by the sign of the \_\_\_\_\_, do hereby give  
 notice, That it is my [or our] intention to apply at the Special Session  
 to be holden at \_\_\_\_\_ in the county of \_\_\_\_\_  
 on \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred  
 and \_\_\_\_\_ for permission to transfer the above-mentioned  
 license to C. D. [state his trade or occupation] now residing at  
 \_\_\_\_\_ in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_  
 and for six months last past having resided at \_\_\_\_\_ [or  
 in the several parishes of \_\_\_\_\_] in the county of \_\_\_\_\_  
 [or counties of \_\_\_\_\_], that the said  
 C. D. intending to keep as an Inn, Alehouse, or Victualling-House,  
 the said house so as aforesaid kept by me [or us] may sell exciseable  
 liquors by retail, to be drunk or consumed in the said house or pre-  
 mises thereunto belonging.  
 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ one  
 thousand eight hundred and \_\_\_\_\_ . s. 11.

**Persons hindered by sickness or other reasonable  
 cause from attending any licensing meeting, and proof**

thereof adduced *on oath*, may authorize another person to attend for them. s. 12.

Licenses to be in force in Middlesex and Surrey from the 5th April, and elsewhere from the 10th October, for one whole year. s. 13.

*Provision for Death or other Contingency.*—If any person licensed shall die, or become incapable, or a bankrupt, or insolvent, or if he or his heirs, executors, or assigns shall remove, or neglect to apply for a continuation of his license; or if any inn shall be pulled down for any public improvement, or be rendered by fire or other casualty unfit for the reception of travellers; in these cases the justices at special session may grant to the heirs, executors, or assigns, or to any new tenant, a license, or if the house be pulled down or rendered unfit, a license to sell in some other convenient house may be granted: provided such licenses shall continue only in force to the end of the year, and in case of removal to another house, notice must be given on some Sunday within six weeks before the special session, in the manner and form before described in section 10. s. 14.

*Fees for Licenses.*—The clerk of the justices at any annual meeting, or special session, may lawfully receive from every person to whom a license is granted, for trouble and *all expenses*, the following sums:—

	s.	d.
For constable or officer serving notices ..	1	0
For clerk of justices for license .....	5	0
For precept to the high constable and notices to be delivered by the petty constable.....	1	6

Clerks demanding or receiving more than these fees to forfeit 5*l.* s. 15.

No sheriff's officer, or officer executing the process of any court of justice, qualified to hold or use any license under this act. s. 16.

*Excise Licenses.*—No license for the sale of any exciseable liquors to be consumed on the premises shall be granted by the commissioners or any officer of excise to

any person, unless such person shall previously have obtained a license from the justices under this act. s. 17.

*Penalties.*—Any person *without a license* selling or exchanging, or for valuable consideration disposing of any exciseable liquor by retail, to be consumed in his house, or *licensed*, and so doing in his house, not being the house specified in the license, shall, for every offence, on conviction before one justice, forfeit not exceeding 20*l.* nor less than 5*l.* with costs. But the penalty not to attach in case of death or insolvency, and sale by the heir or assigns prior to the next special sessions. s. 18.

Every licensed person shall, if required, sell all liquors by retail (except in quantities less than half a pint), by the gallon, quart, pint, or half-pint, sized according to the standard; in default thereof to forfeit the illegal measure, and pay not exceeding 40*s.* with costs, to be recovered within thirty days before one justice. s. 19.

In cases of riot, or probability of riot, houses licensed in the neighbourhood to be closed at the order of two justices. s. 20.

Any person convicted of a *first offence*, before two justices, against the tenor of his license, to forfeit not exceeding 5*l.* with costs; guilty of a *second offence* within three years of the first, to forfeit not exceeding 10*l.* with costs; and guilty of a *third offence* within three years to forfeit not exceeding 50*l.* with costs; or the case in the last instance may be adjourned to the petty sessions, or the annual meeting, or the general quarter-sessions; and provided the offender is found guilty by a *jury*, he may be fined 100*l.* or adjudged to forfeit his license, or both, and rendered incapable of selling any exciseable liquor in any inn kept by him for *three years*. s. 21.

Proceedings at the session in certain cases may be directed by the justices to be carried on by the constable and the expenses defrayed out of the county-rates. s. 22. *Witnesses* refusing to attend without lawful excuse may be fined not more than 10*l.* s. 23. Penalties against justices may be sued for in any court in Westminster; a moiety to the king and a moiety to the party

suings. s. 24. Penalties adjudged by justices may be recovered by distress, or the party imprisoned one, three, or six calendar months. s. 25. Justices may award one half the penalty to the prosecutor. s. 26. Appeal may be made to the quarter-sessions. s. 27. Justices in case of appeal may bind parties to appear. s. 28. Court may adjudge costs. s. 29. Actions against justices or constables to be commenced within three calendar months. s. 30. Conviction to be on oath of one or more witnesses. s. 31. Form of conviction. s. 32. Convictions before justices to be returned to the quarter-session and filed of record. s. 33. Convictions not removable by *certiorari*. s. 34.

*Commencement of this Act and repeal of former Acts.*—Section 35 enacts the act shall commence on the 10th of October, 1828, from which time it repeals 5 & 6 Edw. VI. c. 25; 1 Jac. I. c. 9; 4 Jac. I. c. 4 & 5; 7 Jac. I. c. 10; 21 Jac. I. c. 10; 21 Jac. I. c. 7; 1 Car. I. c. 4; 8 Car. I. c. 3; of 9 Geo. II. c. 23, ss. 14, 15, 20; of 24 Geo. II. c. 40, s. 24; of 26 Geo. II. c. 18, s. 12; 26 Geo. II. c. 31; of 28 Geo. II. c. 19, s. 2; of 29 Geo. II. c. 12, ss. 23, 24; of 30 Geo. II. c. 24, s. 14; of 5 Geo. III. c. 46, ss. 20, 21, 22; 32 Geo. III. c. 59; of 38 Geo. III. c. 54, s. 13; 39 Geo. III. c. 86; of 48 Geo. III. c. 143, ss. 7, 10; and of 4 Geo. IV. c. 125, ss. 1-6. [Middlesex Local Act.] Licenses granted and recognizances entered into under the 3 Geo. IV. c. 77, to continue in force until the expiration of their respective terms, and any offences against them to be punished according to the provisions of the 3 Geo. IV. till the 10th of October, and from that time to be prosecuted and punished under the provisions of the present act. s. 35.\*

\* The 3 Geo. IV. is the last General Licensing Act, and magistrates will be bound to grant licenses and take recognizances until the commencement of the present act on the 10th of October, 1828. From that time, the usual certificates of good conduct will not be required, nor recognizance taken on granting a license. But licenses and recognizances under the former statute will continue in force till the expiration of their respective terms, and any infringement of their obligations will be punishable, after the 10th October, under the provision of the new act. Though the new act has done away with recognizances, still, a recognizance being only a personal obligation,

The act is not to affect the two universities, nor the trade of licensing in the city of London, nor the privileges of the Vintners' Company (except as to persons who have obtained their freedom by redemption only); nor any law of excise; nor to prohibit any person selling beer in booths in fairs as before allowed. s. 36.

*Definitions.*—In this act the word “inn” shall be deemed to include any inn, alehouse, or victualling-house; and that the words “inn, alehouse, or victualling-house,” shall be deemed to include all houses in which is sold by retail any exciseable liquor, to be drank or consumed on the premises; and that the words “exciseable liquor” shall be deemed to include any ale, beer, or other fermented malt liquor, sweets, cyder, perry, wine, or other spirituous liquor, which is now or shall be hereafter charged with duty either by customs or excise. s. 37.

#### FORM OF LICENSE.

At the General Annual Licensing Meeting [or an adjournment of the General Annual Licensing Meeting, or at a Special Petty Session] of His Majesty's justices of the peace acting for the division [or liberty, &c. as the case may be] of \_\_\_\_\_ in the county of \_\_\_\_\_ holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_, for the purpose of granting licenses to persons keeping Inns, Alehouses, and Victualling-Houses, to sell exciseable liquors by retail, to be drank or consumed on their premises, we, being \_\_\_\_\_ of His Majesty's justices of the peace acting for the said county [or liberty, &c. as the case may be,] and being the majority of those assembled at the said session, do hereby authorize and empower A. L., now dwelling at \_\_\_\_\_ in the parish of \_\_\_\_\_ and keeping [or intending to keep] an Inn, Alehouse, or Victualling-House, at the sign of the \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ in the division and county aforesaid, to sell by retail therein, and in the premises thereunto belonging, all such exciseable liquors as the said A. L. shall be licensed and empowered to sell under the authority and permission of any Excise License, and to permit all such liquors to be drank or consumed in his said house or in the premises thereunto belonging; provided that he [or she] do not fraudulently dilute or adulterate the same, or sell the same knowing them to have been fraudulently diluted or adulterated; and do not use in selling any weights or measures that are not of the

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those already entered into are binding on the cognizers, and recoverable by action at common law. Any offences against the tenor of license granted before or after the commencement of the present act, will, from the 10th of October, be punishable as described, in section 21 of the new act.

legal standard; and do not wilfully or knowingly permit drunkenness or other disorderly conduct in his [or her] house or premises; and do not knowingly suffer any unlawful games or any gaming whatsoever therein; and do not knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; and do not keep open his [or her] house, except for the reception of travellers, nor permit or suffer any beer or other exciseable liquor to be conveyed from or out of his [or her] premises, during the usual hours of the morning and afternoon divine service in the church or chapel of the parish or place in which his [or her] house is situated, on Sundays, Christmas Day, or Good Friday, but do maintain good order and rule therein. And this License shall continue in force from the day of                      next, until the

day of                      then next ensuing, and no longer: provided, that the said A. L. shall not in the mean time become a sheriff's officer, or officer executing the process of any court of justice, in either of which cases this License shall be void. Given under our hands and seals, on the day and at the place first above written.

SCOTCH AND IRISH SMALL NOTES.

CAP. LXV.—*An Act to restrain the Negotiation in England of Promissory Notes and Bills under a limited Sum issued in Scotland or Ireland.* [15th July, 1828.]

The circulation of small notes in England having been prohibited by 7 Geo. IV. c. 6, after April 5, 1829, it is enacted, that no corporation or person shall, from that period, utter or negotiate, in England, any promissory or other note, draft, or undertaking in writing, made payable on demand to the bearer, for a *less sum than 5l.* which has been made or issued in Scotland, Ireland, or elsewhere, under a penalty not exceeding 20*l.* nor less than 5*l.* s. 1. The penalty to be recovered in a summary way before a justice by information on complaint, and applied as directed by 48 Geo. III. c. 88, s. 2.\* The Treasury may order a remission or mitigation of penalties. s. 3.

Nothing in this act extends to any draft or order on bankers for the use of the drawer. s. 4.

DISCOVERY OF THE LONGITUDE.

CAP. LXVI.—*An Act for repealing the Laws now in force relating to the Discovery of the Longitude at Sea.* [15th July, 1828.]

By the first section all acts granting rewards for the

\* Under 48 Geo. III. the penalties are applied one moiety to the informer and one moiety to the poor of the parish.



discovery of the longitude at sea, or for any invention or proposals relating thereto, are repealed, and also rewards for the discovery of a *northern passage*, or the nearest approach to the North Pole, except as to ships which have sailed from the United Kingdom *before* the passing of this act. But the Lord High Admiral may authorize the publication of the Nautical Almanack, or such other useful tables as he deems conducive to the discovery of the longitude, and the penalty for publishing such almanack or tables without his authority is 20*l.* each copy. s. 2.

#### RETAIL BREWERS.

CAP. lxxviii.—*An Act to amend an Act of the 5 Geo. IV. for amending the Laws of Excise relating to retail Brewers.* [19th July, 1828.]

After reciting the 5 Geo. IV. c. 54, by which it is provided [s. 11] that no licensed brewer of beer for sale, who shall also be licensed to retail such beer, shall sell or send out any beer in any quantity less than a whole barrel, except between the hours of six in the morning and nine in the evening, or shall sell or send out any beer during the usual hours of divine service on Sundays, upon pain of forfeiting for every offence 20*l.*; and that it is expedient that the time during which such brewers shall be allowed to sell beer should be extended, this act enacts that it shall be lawful for any such brewer to sell beer by retail as aforesaid between the hours of *four in the morning and ten in the evening.*

#### GAME LAWS.

CAP. lxxix.—*An Act for the more effectual Prevention of Persons going armed by Night for the Destruction of Game.* [19th July, 1828.]

After repealing 57 Geo. III. c. 90, it enacts that, if any person by night shall take or destroy game or rabbits on *any land*, or shall enter therein with gun, net, engine, or other instrument, for the purpose, he shall, on conviction before two justices, be committed to hard labour in the house of correction for not exceeding three calendar months, and, at the expiration of that period,

find sureties, himself in 10*l.* and two others in 5*l.* each, or one surety in 10*l.* not to offend again for the next following year; and, in case of not finding sureties, be further imprisoned six months. For a *second offence*, be imprisoned six calendar months, and find sureties, himself in 20*l.* and two others in 10*l.* each, not to offend during the two following years; in case of not finding sureties, be further imprisoned one year. The *third offence* is made a MISDEMEANOR, punishable with transportation for seven years, or imprisonment to hard labour in the house of correction for not exceeding two years. Persons offending in Scotland a first, second, or third time, are liable to the same punishments. s. 1.

Owners and occupiers of land, their servants, and assistants, may apprehend offenders either on the spot or *other place* to which they may be pursued, and the offenders assaulting or offering violence with gun, club, stick, or otherwise, shall be deemed guilty of misdemeanor and liable to transportation for seven years, or imprisonment to hard labour for two years. s. 2.

A warrant may be issued on the oath of one credible witness, or in Scotland on the application of the procurator fiscal of court. s. 3. Offences punishable by summary conviction must be prosecuted within six months; those by indictment within twelve months. s. 4. Form of conviction. s. 5. Persons aggrieved by summary conviction may appeal to quarter-sessions. s. 6. No *certiorari*. s. 7. Conviction to be returned to the quarter-sessions and registered. s. 8.

*Persons going armed.*—Persons to the number of *three or more* entering, by night, *any land* for the purpose of taking or destroying game or rabbits, and being armed with gun, bludgeon, or other offensive weapon shall be guilty of a misdemeanor, subject to transportation for not exceeding fourteen years, or to imprisonment to hard labour for not exceeding three years. s. 9.

Sections 10 and 11 relate to the jurisdiction of the sheriffs in Scotland and the courts in which offenders may be there tried.

*Definitions.*—For the purposes of the act, the *night* is considered to commence at the expiration of the first

hour after sun-set, and to conclude at the beginning of the last hour before sun-rise. The word *game* is deemed to include hares, pheasants, partridges, grouse, heath or moor game, black-game, and bustards. ss. 12, 13.

#### CUSTOMS.\*

CAP. lxxvi.—*An Act to amend the Laws relating to the Customs.* [July 25, 1828.

This act to commence August 10, 1828. s. 1.

Officers of customs not compellable to serve as mayor or sheriff, or any corporate, parochial, or other public employment, nor on any jury or inquest, nor in the militia. s. 2.

*Wine, Segars, Clocks, &c.*—So much of 6 Geo. IV. c. 107, as restricts the importation of *wine*, except in certain quantities, and prohibits the importation of *segars* in packages containing one hundred pounds, is repealed. s. 3.

The import of any *clock* or *watch*, impressed with any mark or stamp appearing to represent a legal British assay mark, or purporting to be of British manufacture, or not having the name and abode of some foreign maker visible on the frame and face, or not being in a complete state, is prohibited. s. 4.

No goods prohibited to be imported into the United Kingdom from abroad shall be imported from the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, although the manufacture of these islands, if the materials of which such goods be made are the produce of a foreign country.

*Duties overcharged not to be repaid.*—From January 5, 1829, no overcharge of duty of customs shall be returned, nor any certificate or other document granted for the return of such overcharge be paid, unless such certificate or document be presented for payment *within three years* from the day on which such duty had been paid. s. 6.

\* This statute introduces some important alterations and also new provisions in the series of acts passed in the session of 1825 for the better regulation of the customs, bounties, navigation, and warehousing system of the empire.

*Smuggling Act.*—This amends 6 Geo. IV. c. 108, s. 83, by enacting that any person taken for smuggling, or relating to the revenue of customs or excise, and carried before *one* [formerly two] justice, may, at the discretion of such justice, be detained a reasonable time, as well before as after any information has been exhibited against him, and at the expiration of such time, two or more justices may hear and determine the matter. s. 7.

*Navigation Laws.*—The 6 Geo. IV. c. 109, having granted, under restrictions, to certain ships built in the British settlements at Honduras, the privileges of British registered ships in all direct trade between the United Kingdom and these settlements; it is further granted that such ships shall be entitled to the privileges of British registered ships in all direct trade between any British possessions in *America* and the settlements at Honduras. s. 8.

*Mediterranean Passes.*—No Mediterranean pass shall be issued for the benefit of any person, as being an inhabitant of Malta or of Gibraltar, but not being a person entitled to be an owner of a British registered ship, unless such person shall have resided at Malta or at Gibraltar upwards of fifteen years prior to the 10th of October, 1827. s. 9.

*Customs' Duties Act.*—Instead of the Duties on several articles, imposed by 6 Geo. IV. c. 111, the following Table of Duties shall be levied :—

TABLE OF NEW DUTIES INWARDS, 1828.

	£	s.	d.
ALKALI imported from any place within the limits of the East India Company's charter, viz —any article containing Soda or Mineral Alkali, whereof Mineral Alkali is the most valuable part, (such Alkali not being otherwise particularly charged with duty)—			
.....if not containing a greater proportion of Mineral Alkali than 20 per centum, to the 6th of January, 1829, the ton.....	8	10	0.
from the 5th of January, 1829, to the 6th of January, 1830, the ton .....	6	10	0
from and after the 5th of January, 1830, the ton.....	5	0	0

s. d.

.....if containing more than 20 per centum, and not more than 25 per centum, of Mineral Alkali, to the 6th of January, 1829, the ton	11	5	0
from the 5th of January, 1829, to the 6th of January, 1830, the ton	8	12	0
from and after the 5th of January, 1830, the ton	6	12	0
.....if containing more than 25 per centum, and not more than 30 per centum, of Mineral Alkali, to the 6th of January, 1829, the ton	14	10	0
from the 5th of January, 1829, to the 6th of January, 1830, the ton	11	0	0
from and after the 5th of January, 1830, the ton	8	10	0
.....if containing more than 30 per centum, and not more than 40 per centum, of Mineral Alkali, to the 6th of January, 1829, the ton	18	10	0
from the 5th of January, 1829, to the 6th of January, 1830, the ton	14	0	0
from and after the 5th of January, 1830, the ton	11	0	0
.....if containing more than 40 per centum of Mineral Alkali, to the 6th of January, 1829, the ton	22	6	8 1
from the 5th of January, 1829, to the 6th of January, 1830, the ton	17	0	0
from and after the 5th of January, 1830, the ton	13	0	0
<b>BOTTLES of Green or Common Glass, full, but not containing Wine or Spirits; viz.</b>			
..... imported from any foreign place, the dozen quarts content	0	2	0
..... imported from any British possession, and although containing Wine or Spirits, the dozen quarts content	0	1	0
<b>BUGLES, the lb.</b>	0	2	0
<b>CASTOR NUTS, or SEEDS, imported from any British possession, cwt.</b>	0	0	6
<b>CASTOR OIL, imported do. the lb.</b>	0	0	3
<b>CEDAR WOOD, imported do. the ton</b>	0	10	0
<b>CEIBA-TREE COTTON, or SILK COTTON, imported do. the cwt.</b>	0	0	4
<b>COIR ROPE, the cwt.</b>	0	5	0
..... old, and fit only to be made into mats, the ton	0	5	0
<b>FUSTIC, imported from any British possession, the ton</b>	0	3	0
<b>GUM---Arabic, imported do. the cwt.</b>	0	6	0
.....Guaiacum, imported do. the lb.	0	0	3
.....Senegal, imported do. the cwt.	0	6	0
<b>HAIR---Horse-Hair, the cwt.</b>	0	0	6
.....Human Hair, the lb.	0	1	0
.....not particularly charged with duty in this or any other act, for every 100l. of the value	5	0	0
<b>HIDES---Horse, Mare, Gelding, Buffalo, Bull, Cow, or Ox Hides, viz.</b>			

# CUSTOMS' DUTIES.

49

	£	s.	d.
.....tanned and not otherwise dressed, the lb.....	0	0	6
the produce of, and imported from, any			
British possession, the lb.....	0	0	3
cut or trimmed, the lb.....	0	0	9
the Produce of, and imported from,			
any British possession, the lb.....	0	0	4½
.....and pieces of Hides tawed, curried, or in any way			
dressed, the lb.....	0	0	9
the produce of, and imported from, any			
British possession, the lb.....	0	0	4½
cut or trimmed, the lb.....	0	1	2
the produce of, and imported from,			
any British possession, the lb.....	0	0	7
LATTEN---Black, the cwt.....	0	8	0
.....Shaven, the cwt.....	0	12	0
LEAF METAL (except Leaf Gold), the packet, containing			
250 leaves.....	0	0	3
LEAD ORE, from the 1st of December, 1828, the ton.....	1	5	0
LEATHER, pieces of Leather, or Leather cut into shapes,			
or any article made of Leather, or any manufacture where-			
of Leather is the most valuable part, not otherwise enu-			
merated or described, for every 100 <i>l.</i> of the value.....	30	0	0
LOGWOOD, imported from any British possession, the ton.....	0	3	0
MAHOGANY, imported from Jamaica, the ton.....	4	0	0
..... Mats and Matting, imported from any British			
possession, for every 100 <i>l.</i> of the value.....	5	0	0
OIL---of Carraway, the lb.....	0	4	0
..... of Olives, imported in a ship belonging to any of the			
subjects of the King of the Two Sicilies, and not			
warehoused before the 1st of August, 1828, in addi-			
tion to the duties imposed by any other act, the			
tun.....	1	1	0
..... of Hempseed, Linseed, and Rapeseed, and Seed Oil,			
not particularly charged with duty in this or any			
other act, imported from any British possession,			
the tun.....	1	0	0
OPIUM, the lb.....	0	4	0
ORSEDEW, the lb.....	0	0	6
PICTURES, being 200 square feet or upwards, each.....	10	0	0
PLUMS, dried, the cwt.....	1	7	6
PRUNELLOES, the cwt.....	1	7	6
RICE, the produce of, and imported from, any British pos-			
session, viz. in the Husk, the quarter.....	0	0	1
..... not in the Husk, the cwt.....	0	1	0
RHUBARB, the lb.....	0	2	8
RHUBARB, imported from any British possession, the lb...	0	2	6
SAGO, imported from any British possession, viz. Pearl, the			
cwt.....	1	0	0
..... Common, the cwt.....	0	1	0
..... Powder, the cwt.....	1	0	0
SKINS---Calf or Kip Skins, viz. tanned, and not otherwise			
dressed, the lb.....	0	0	9
the produce of, and imported from, any			
British possession, the lb.....	0	0	4½

	£	s.	d.
cut or trimmed, the lb.....	0	1	2
the produce of, and imported from, any British possession, the lb. ....	0	0	7
..... tawed, curried, or in any way dressed, the lb. ....	0	1	0
the produce of, and imported from, any British possession, the lb.....	0	0	6
cut or trimmed, the lb.....	0	1	6
the produce of, and imported from, any British possession, the lb. ....	0	0	9
..... Kangaroo Skins, raw and undressed, imported from any British possession, for every 100l. of the value .....	5	0	0
..... Martin Skins, undressed, imported from any British possession, the skin .....	0	0	3
<b>SPIRITS</b> , or Strong Waters, the produce of any British possession within the limits of the East India Company's charter, not sweetened nor mixed with any article so that the degree of strength cannot be exactly ascertained by Sike's hydro- meter ;			
..... for every gallon of any strength not exceeding the strength of proof by Sike's hydrometer, and so in proportion for any greater strength than the strength of proof .....	0	15	0
<b>TALLOW</b> , imported from any British possession in Asia, Africa, or America, the cwt.....	0	1	0
<b>TILES</b> ---Dutch Tiles, for every 100l. of the value .....	15	0	0
<b>TORTOISESHELL</b> , unmanufactured, imported from any British possession, the lb. ....	0	0	6
<b>TURMERIC</b> , imported from any British possession, the cwt.....	0	2	4
<b>WAX</b> , <b>BEEES</b> , imported from any British possession, viz.			
..... unbleached, the cwt. ....	0	10	0
..... in any degree bleached, the cwt.....	1	0	0
<b>WOOL</b> ---Cotton Wool, or Waste of Cotton, imported from any British possession, the cwt.....	0	0	4

### TABLE OF NEW DUTIES OUTWARDS, 1828.

<b>WOOL</b> ---of Sheep, Lambs, Hares, and Conies, the cwt.....	0	1	0
<b>WOOLLEN MANUFACTURES</b> , viz. Woolfels, Mortlings, Shortlings, Yarn, Worsted, Woollocks, Cruels, Cover- lids, Waddings, or other Manufactures, or pretended Manufactures, slightly wrought up or put together, so as the same may be reduced to and made use of as Wool again, Mattrasses or Beds stuffed with Combed Wool, or Wool fit for combing or carding, the cwt. ....	0	1	0

*Silk Duties.*—The duties now payable upon the im-  
portation of silk and silk manufactures, which by  
7 Geo. IV. were payable to the 10th October, 1823, are  
further continued till the end of the next session of par-  
liament. s. 11.

*Cordage and Sailcloth.*—So much of 6 Geo. IV. c. 111,

as charges any duty of importation upon cables, not being iron cables, or upon cordage or sails, in the use of any British ship, being fit and necessary for such ship, and not otherwise disposed of, *shall be repealed*; and that whenever such cables, cordage, or sails shall be otherwise disposed of, then, in lieu of the duty now payable, there shall be paid a duty of 20*l.* upon every 100*l.* of the value thereof. s. 12.

*Honduras Mahogany.*—If any mahogany which had been imported direct from the Bay of Honduras, in a ship cleared out from the port of Belize, into a free warehousing port in any of the British possessions in America, and there warehoused as having been so cleared and imported, shall be exported from the warehouse, and imported direct into the United Kingdom, such mahogany shall be subject to the same duty as it would have been subject to if it had been imported direct from the bay of Honduras in a British ship cleared out from the port of Belize, provided it be stated in the proper clearance of the ship, that such mahogany had been so warehoused, and exported from the warehouse as aforesaid. s. 13.

*Warehousing Act.*—Amends 6 Geo. IV. c. 112, by enacting that any stuffs or fabrics of silk, linen, cotton, or wool, or of any mixture of them with any other material, may be taken out of warehouse to be *cleaned, dyed, refreshed, stained, or calendered, or to be bleached or printed*, without payment of duty, under security, nevertheless, by bond, that such goods shall be returned to the warehouse within a limited time; also *rice* from the East Indies may be taken out to be cleaned. s. 14.

*Corn, grain, meal, or flour, or other ground corn*, may be imported into the United Kingdom to be warehoused, without payment of duty at the time of the first entry thereof, or notwithstanding that such goods may be prohibited to be imported for home use. s. 15.

*Bounties on Linen, &c* —The proportions of the several bounties on *linen* payable under 6 Geo. IV. c. 113, on January 5th, 1829, shall continue payable without reduction till January 5th, 1832, on which day the whole of such bounties shall cease; and on January 5th, 1829,



one half of the bounty now payable on the exportation of *sail-cloth* shall cease, and on January 5th, 1832, the whole of this bounty shall cease. s. 16.

*Timber used in Mines.*—Debentures for the drawback for deals and timber used in mines, are to be issued *twice a year*, but not to be paid after the expiration of three years from the payment of the duty; and the same drawback allowed whether imported in any foreign or British ship. s. 17.

*Bounties on Sugar.*—The committee of sugar refiners in London and the committee of merchants in Dublin are to provide *sample loaves* of double refined sugar, one of which shall be lodged with the committee and one with the commissioners of customs, for the purpose of comparing them with double refined sugar, or sugar equal in quality, entered for the bounty on exportation: such sample-loaves not to exceed 14lbs. in weight, and to be made by a distinct second process of refinement from single refined sugar, perfectly clarified, and in loaves of uniform whiteness, thoroughly dried in the stove. s. 18.

Refined sugar, *equal in quality* to double refined sugar, to be entitled to the *same bounty*; but both descriptions of sugar must correspond in weight and quality to the standard loaves already mentioned. s. 19.

Sugar entered for the bounty and found not equal to the standard shall be forfeited. s. 20.

The bounties on sugar to be granted, whether of the produce of the British plantations, or of the East Indies, or of any other place. s. 21.

*Colonial Trade Act*—Amends 6 Geo. IV. c. 114, by enacting that, upon the entry outwards of goods in any of the British possessions in America, to be exported to the United Kingdom or to other such possessions, it shall be truly stated, under the pain of forfeiture of such goods, whether they are the produce of a British possession in America or of foreign production, and this distinction shall be observed in the certificate of clearance. s. 22.

*Goods imported Duty free into the Colonies.*—The following goods having been warehoused in the United Kingdom, namely, corn, grain, seeds, meal, flour, bread,

biscuit, rice, fruits, pickles, wood of all sorts, hemp, flax, tow, oakum, pitch, tar, rosin, turpentine, oolres, brimstone, saltpetre, gums, drugs, vegetable oils, burr stones, dog stones, hops, cork, sago, tapioca, sponge, sausages, cheese, cider, wax, spices, tallow, and being imported into any of the British possessions in America direct from the warehouse in the United Kingdom, shall be *duty free*; also horses, mules, asses, neat cattle, and all other live stock, and tallow and raw hides brought by land or by inland navigation into any of the said possessions, shall be so brought duty-free. s. 23.

*Wheat* entered to be warehoused in British colonies in America, may be delivered to the owner or importer, to be first *ground into flour*, bond being given to the custom house. s. 24.

So much of 6 Geo. IV. c. 114, as restricts the importation of wine, except in certain quantities, into Guernsey, Jersey, Alderney, and Sark, is repealed. s. 25.

Section 26 explains a local act of Upper and Lower Canada.

*Trade of the Isle of Man.*—No spirits or strong waters shall be imported into the Isle of Man, except with the license of the commissioners of customs. s. 27.

Before any goods can be shipped into Man for exportation to the United Kingdom as the produce or manufacture of the island, affidavit of that fact must be made to the satisfaction of the collector or comptroller of customs at the place of shipment, and such officer shall give a certificate, to be received at the port of importation, instead of the former certificate of the governor or commander-in-chief. s. 28.

*Irish Steam-Vessels.*—For the purposes of 4 Geo. IV. c. 88, regulating passage-vessels between Great Britain and Ireland, it is provided that every steam-vessel which is of the register tonnage of 140 tons, shall be deemed a vessel of 200 tons at least. s. 29.

#### TURNPIKE-ROADS.

CAP. LXXVII.—*An Act to amend the Acts for regulating Turnpike-Roads.* [July 25th, 1828.

Books of account and proceedings of trustees to be

received in evidence in all judicial matters, without proving their contents, and to be open to the inspection of trustees and of any creditor of the tolls without fee. ss. 1, 2. Trustees may continue toll-gate or side bar, and at a special meeting, of which fourteen days previous notice has been given, may order new ones to be erected, with toll-houses and other conveniences. ss. 3, 4, 5. Subscribers to any turnpike-road to pay their subscription according to agreement, or as the trustees direct, and on refusal may be sued in the name of any trustee, the treasurer, or clerk. ss. 6, 7. Trustees may shorten, vary, and alter roads over private land, subject to the restrictions of the 3 Geo. IV. c. 126, and provided such road does not exceed sixty feet in width, ditches, foot-path, &c. included. ss. 8, 9. Sections 10, 11, 12, and 13 relate to the validity of mortgages, bonds, &c. and the power of the trustees relating thereto. Persons employed under acts which have expired or been repealed to deliver up books; but officers to hold their offices unless removed by the trustees. ss. 14, 15. Tolls to be collected, and persons claiming exemptions not entitled thereto, to forfeit 5*l.* ss. 16, 17. Actions to be brought within six months. s. 18.

#### REDUCTION OF NATIONAL DEBT.

CAP. xc.—*An Act to amend the Acts for regulating the Reduction of the National Debt.* [25th July, 1828.

So much of the 4 Geo. IV. c. 119, is repealed as directs the issuing out of the consolidated fund the sum of *five millions*, to be placed to the account of the commissioners for the reduction of the national debt. s. 1. In future such sum shall be applied to the reduction of the debt as, with the interest on the stock held by the commissioners on the 5th of July, 1828, will amount to *three millions* a year. s. 2. Commissioners may apply money issued under this act in the purchase of exchequer-bills, and such bills shall be cancelled within five days after the end of the quarter in which they were purchased. ss. 4, 5.

## SAVING BANKS.

**CAP. xcii.**—*An Act to consolidate and amend the Laws relating to Saving Banks.* [July 28th, 1828.

From November 20th, 1828, the following acts relating to Saving Banks, namely, 57 Geo. III. c. 105, (Irish Act); 57 Geo. III. c. 130; 58 Geo. III. c. 48; 1 Geo. IV. c. 83; and 5 Geo. IV. c. 62, are repealed,\* but not to annul any payments or proceedings done under the authority of the repealed acts. s. 1.

*Societies entitled to the benefit of the Act.*—Persons forming a society for deposits of money to accumulate at compound interest, and to receive back principal and interest, after deducting merely the necessary expenses of management, must, to be entitled to the benefits of the act, submit the rules and formation of such society to be approved by the justices at the general quarter sessions, and by the commissioners for the reduction of the national debt. s. 2.

The rules of the institution must be entered in a book, to be opened to the inspection of the depositors, and a copy deposited with the clerk of the peace, to be filed with the rolls of sessions, and the clerk returning a certificate of enrolment within *ten days* to receive a fee of 10s.; but this is not to prevent alterations, which are to be entered and certified in like manner, the clerk receiving a fee of 5s. s. 3.

Before a transcript of the rules, or alterations in former rules, is deposited with the clerk of the peace, it must be submitted to a barrister, appointed by commissioners for the reduction of the national debt, to ascertain whether the rules be conformable to law; the barrister giving a certificate of such conformity, or pointing out where they are repugnant, to receive from the society not more than a guinea for his fee; the transcript, signed by two trustees, together with the certificate, is then to be submitted to the justices at quarter sessions, who may reject such rules as they disapprove, and the clerk of

\* These are all the Acts that have been passed relative to saving banks, and of course the new law embodies the constitution and all the provisions intended to govern the future establishment and regulation of these useful institutions.

the peace, within ten days, shall give notice of such rejection to the two trustees. Rules relating merely to the hours of attendance at the institution, need not be submitted to the barrister. s. 4. Rules, when entered and deposited, become binding on officers and depositors, and may be received in evidence. s. 5.

*Regulation of Officers.*—No institution to have the benefit of the act, unless it be expressly provided by the rules, that no treasurer, trustee, or manager shall profit by any deposit beyond his *actual expenses*; but allowances may be made for the salaries of other officers and charges of management. s. 6.

The treasurer and every officer receiving a salary is to give security for the faithful discharge of his trust. s. 7.

The property and effects of the institution are vested in the trustees, in whose names all legal proceedings must be maintained. s. 8.

No trustee or manager personally liable, except for his own acts, nor for any thing done, except where guilty of wilful neglect. s. 9.

Persons entrusted with the money, books, or effects of the institution, to surrender them on the order of two trustees and three managers, or of a general meeting of trustees or managers. s. 10.

*Funds, where to be placed.*—Trustees of saving banks are to invest all money in the bank of England or Ireland, and not on any other security; sums invested to be placed to the account of the commissioners for the reduction of the national debt, and not to be less than 50*l.* and previous to any investment, an order of two trustees must be produced. s. 11. But this is not to prevent the trustees receiving money to be applied in any other manner, according to the wishes of depositors, and conformably to the rules of the institution. s. 12. Central banks may receive and invest the money of branch banks, s. 13. Making false declaration to obtain receipts from commissioners, subjects the sum deposited to forfeiture. s. 14. Money paid on saving bank account to be invested in bank annuities or exchequer bills. s. 15.

*Interest payable by Commissioners.*—On the 20th November, 1828, the interest payable on the receipts

issued to the trustees by the commissioners shall cease ; and from that time, all receipts issued prior to that day shall carry interest at the rate of *two-pence halfpenny per centum per diem* ; and the same rate of interest shall be paid on all future investments.\* s. 16.

Interest due on money mentioned in the receipt to be calculated half yearly up to the 20th November and the 20th May, and carried to account of saving bank as additional principal ; but no interest shall be paid for any fractional part of a pound. And all interest arising to depositors may be calculated yearly, or twice a year, and carried to their credit as principal. s. 17.

*Amount of Drafts.*—Before drawing for money, trustees to sign appointment of agent to receive the same, which appointment shall be deposited with commissioners ; but appointments may be revoked, and others granted. s. 18. Trustees may draw for the whole or part of the sum placed to their account, by drafts on the commissioners ; which drafts being indorsed by their officer, and the interest added thereto, shall be paid by the cashiers of the bank of England. s. 19. When the sum drawn exceeds 5,000*l.* the draft to be signed by four trustees, and the signature of each to be attested by a separate witness ; drafts for 10,000*l.* drawn by the trustees of a saving bank or *friendly society*, not to be paid until after 14 days. s. 20. Officers not to issue in *one day* orders for more than 10,000*l.* to the account of a saving bank or friendly society ; and trustees appearing in person may receive payment of drafts in lieu of their agents. s. 21.

*Distribution of Surplus Fund.*—Within six weeks after the 20th November, 1828, the trustees and managers of the saving banks already established in England and Ireland shall ascertain the amount of the increased funds of their respective banks up to that day, and appropriate them in the manner provided by their rules made before the passing of this act ; or in the event of no such rules, then in such manner as the trustees or managers, or the major part of them, assembled at any general meeting, shall think proper. s. 22.

\* See note at the end of this Act.

In all cases where the property of any saving bank shall, from the 20th November, 1828, be increased by the interest received beyond the rate of interest payable to the depositors, the trustees or managers shall, within six months after that date, in each year, ascertain, certify, and *pay over to the commissioners, the amount of such increased property*, reserving such portion as may appear necessary to meet current expenses. s. 23.

*Interest to Depositors.*—From the 20th of November, 1828, the interest payable to depositors shall not exceed the rate of *two-pence farthing per centum per diem*. s. 24.

*Deposits by Minors.*—Deposits for the benefit of any person under the age of twenty-one years, may be received, and such depositor receive his share and interest in the funds of the institution. s. 25.

*Deposits by Married Women.*—Whereas, “deposits may have been made by married women, without notice that they are married, and deposits may have been made by women who may have afterwards married,” *it is enacted*, that it shall be lawful for the trustees to pay any sum of money in respect of such deposits to any such woman, unless the husband, or his representative, give to the trustees notice of such marriage, and require payment to be made to him. s. 26.

*Friendly Societies.*—After 20th November, 1828, *charitable societies* for the benefit of the poor, may invest sums not exceeding 100*l.* per annum, or 300*l.* in the whole, in any saving bank. s. 27. Also, *friendly societies* may, with consent of trustees, subscribe any portion of their funds into saving banks; but friendly societies formed and enrolled after passing this act, not to have more than 300*l.* principal and interest, in any saving bank. s. 28. Receipts of treasurer or other officer of such societies deemed a sufficient discharge. s. 29. Members of these societies not liable to penalty or disability by subscribing into a saving bank. s. 30.

Provisions of this act relative to payments of money into the bank of England, and receipts extended to *Act for Encouragement of Friendly Societies*, the 59 Geo. III. c. 128.

*Names, &c. of Depositors.*—No person to pay money

into a saving bank by ticket, number, or otherwise, without disclosing his name, business, and residence, to be entered in the books of the institution. s. 32. But trustees may subscribe on behalf of others. s. 33. Subscribers to one saving bank not to subscribe into *any other*, nor to open a new account in the bank; a declaration to this effect to be made at the time of making the first subscription, and persons violating this regulation to *forfeit their deposits*. s. 34.

*Amount of Deposits.*—From 20th November, 1828, trustees not to receive from any one present or future depositor more than 30*l.* in *any one year*, nor more than 150*l.* in the whole, and when the principal and interest of a depositor amount to 200*l.* *the interest to cease*. s. 35. This is not to affect deposits amounting to 200*l.* at the passing of this act. s. 36. But trustees not to receive from persons whose deposit amounts to 150*l.* any additional deposit. s. 37. Depositors may withdraw their deposits, and again subscribe, provided deposits in one year do not exceed 30*l.*

The whole deposit may at any time be transferred from one saving bank to another, the depositor receiving a certificate from the trustees. s. 39.

*Death of Depositors.*—Depositors dying, leaving any sum exceeding 50*l.* the same not to be paid until after administration; the person claiming to administer to produce certificate of amount in the bank, and no duty to be paid on probate or legacy. s. 40. Administration bonds, &c. for deposits under 50*l.* exempted from duty; but where the deposit of an *intestate* does not exceed 50*l.* the same may be distributed according to the rules of the institution; or, in the event of no rules, according to the Statute of Distributions. s. 41. Payments to persons appearing to be next of kin, under the statute, declared valid. s. 42; also payments under the probate. s. 43. Powers of attorney given by trustees or depositor not liable to stamp duty. s. 44.

*Settlement of Disputes.*—When disputes arise they may be referred to two arbitrators, and in case of their not agreeing, be settled by the barrister appointed by the national debt commissioners, whose award will also



determine by which party his fee of a guinea shall be paid. s. 45.

*Making up of Accounts.*—Trustees annually to make up to 20th November, an account of their funds and expenses, to be transmitted to national debt commissioners, and neglecting to transmit such account, or obey orders of commissioners, the latter may close the account with the saving bank. s. 46. A duplicate of such account to be affixed in a conspicuous part of the institution, for the information of depositors. s. 47. Commissioners to lay accounts annually before parliament of amount of funds received by them on account of all saving banks and friendly societies in England and Ireland. s. 48.

Interest payable to depositors to be computed to 20th May and 20th November, half-yearly or yearly. s. 49.

Sections 50–60 relate to purchase of exchequer bills by commissioners, and their accounts with the Treasury.

Commissioners may appoint a barrister-at-law and such other officers as shall be necessary to the execution of the act. s. 61.

The act to extend to all saving banks established or to be established in England and Ireland. s. 62.\*

\* The most material alterations introduced into the New Saving Bank Act, are those relative to the reduction of interest in sections 16 and 94, and the disposition of surplus in section 93. By these sections the interest received by saving banks is reduced from 3*d.* per day, or 4*l.* 1*l.* 3*d.* per cent per annum, to 2½*d.* per day, or 3*l.* 16*s.* 0½*d.* per cent. and the interest payable to depositors is reduced to 2½*d.* per day, or 3*l.* 8*s.* 5½*d.* per annum; and if this one farthing per cent. per day is more than sufficient to discharge salaries and expenses, the surplus is to be returned to the Commissioners, subject to the future claim of the trustees for the purposes of the institution. These modifications had become indispensable from the great expense annually incurred by Government in the support of saving banks; but the rate of interest is still highly favourable to depositors, and the reduction not proportionate to the general depreciation in the value of money, from the abundance of capital. As to mere profit, then, the saving bank still continues a preferable investment, independent of its infallible security, exemption from stamp duty, economy of management, and the facilities afforded for the deposit and withdrawal of the smallest sums.

The limitation of the amount of deposit in one year to 50*l.* is not a new provision, as has been incorrectly represented, it being previously enacted in 5 Geo. IV. c. 62.

## SUGAR REFINERS.

CAP. xciii.—*An Act to allow Sugar to be delivered out of Warehouse to be refined.* [28th July, 1828.

Upon the application of any person carrying on the business of a sugar refiner in the ports of London, Liverpool, Bristol, or Glasgow, and having two pans at least at work upon the same premises, the officers of customs, at any time before the 5th July, 1829, may deliver to such person foreign sugar, or sugar the produce of the East Indies, to be refined, upon payment of the following duties :—

BROWN or MUSCOVADO or CLAYED SUGAR, not being of greater value than the average price of sugar of the British plantations in America, the cwt.....	£ 1 7 0
..... and further, in respect of every shilling by which such sugar shall be of greater value than such average price, the cwt. ....	0 0 9

To ascertain the *average price* of brown or muscovado sugar, the produce of the British possessions in America, every importer within the city of London or the bills of mortality, who shall, after the 5th August, 1828, by himself or agent, buy or sell any such sugar, deliver in, upon oath before the lord mayor or any of the aldermen of the city of London, to the clerk of the Grocers' Company, on or before Tuesday in every week, a true account of the quantities of such sugar bought or sold in the preceding week, specifying the name of the ship in which it was imported, the name of the master of the ship, and also the marks and packages, and the sum total of the net landing weights of such sugar, and the price paid for each quantity respectively, exclusive of the duty of customs; and the said clerk of the company shall make up in every week the average price of such sugar, and cause it to be published every Friday in the London Gazette; such average price to be deemed the price of brown or muscovado sugar for the purposes of this act. s. 2.

A book or register of average prices to be kept by the clerk of the Grocers' Company, to be inspected by any one upon payment of one shilling. s. 3. Clerk neglecting to do what is required by the act, to forfeit 50*l*. s. 4.

Importer or agent neglecting to make returns in section 2, to forfeit 5*l.* s. 5. Sugar entered for the payment of duty may be seized, and, within five days, taken to the use of the crown, satisfaction being made to the owner. s. 6. Upon entry of sugar for duty under the act, bond to be given for duly exporting such sugar when refined. s. 7. Packages of sugar to be marked before delivery, and accompanied with cartage-note from the custom-house; packages found without such mark or cartage-note, or in places not specified, to be forfeited, together with 100*l.* for each package. s. 8. Not more than 1000 cwt. for every pan actually at work to be in possession of any refiner at one time. s. 9.

## PUBLIC ACTS OF THE 9th GEO. IV.

### *Omitted in the preceding Abridgment.*

#### CAP.

1. Granting supply for the service of 1828.
2. Raising 12 millions by exchequer bills for 1828.
3. Regulating Marine Forces while on shore (annual).
4. For punishing Mutiny and Desertion in the Army (annual).
5. Granting Duties on Personal Estates, Offices, and Pensions (annual).
6. To indemnify persons having omitted to qualify for offices and employments (annual).
7. For lighting, watering, and cleansing towns in Ireland.
8. Rates of Subsistence to Innkeepers on quartering Soldiers (annual).
9. Enabling Justices of Westminster to hold their Sessions during Term, and the sitting of the Court of King's Bench.
10. Supplies for the service of 1828.
11. Allowing Steam Vessels to have fires on board, in ports and canals of Ireland.
12. Indemnifying witnesses for evidence before the Lords, relative to the Borough of Penryn.

13. Regulating Payment of Stamp Duties on Fire Insurances.
16. Repealing Power of Commissioners for Reduction of National Debt to grant Life Annuities.
19. Supply for the year 1828.
20. Prohibiting the import of Foreign Wheat into the Isle of Man, &c. (expired.)
24. Consolidating and amending the Laws relating to Bills of Exchange and Promissory Notes in Ireland.\*
25. Authorizing Crown Solicitors to act in any Court or Jurisdiction in Revenue Matters.
26. Regulating Office of Keeper of the General Register of Hornings and Inhibitions in Scotland.
28. Empowering his Majesty to grant Pensions to the Canning Family.
29. To facilitate Criminal Trials in Scotland.
30. Appropriating surplus Ways and Means to the Year 1828.
33. Settling the Liability of real Estates in India to the Debts of deceased Owners.
34. Regulating Madhouses in Scotland.
35. To protect Purchasers in Ireland against Judgments not revived or re-docketed within a limited Time.
36. Continuing the Annual Duties on Sugar.
37. Relative to Wrecks within the Cinque Ports.
38. Appointing additional Land Tax Commissioners, &c.
39. For preserving Salmon Fisheries in Scotland.
42. To abolish Church Briefs.
43. Regulating Sessional Divisions in England and Wales.
45. Regulating Distilleries in Scotland.
48. Regulating the Excise Duties on Glass.
50. Appropriation of unclaimed Prize Money acquired in India.
51. Amending the Canada Company Act.
52. Erecting a Chapel of Ease, in Killiney, Ireland
53. Relative to Bail, Benefit of Clergy, and Criminal Proceedings in Ireland.

\* By this Act the law of Ireland relative to Bills and Notes is more nearly assimilated to that of England.

- 54. Improving Administration of Criminal Justice in Ireland.
- 55. Consolidating and amending Laws relative to Larceny in Ireland.
- 56. Consolidating and amending Laws relative to Malicious Injuries in Ireland.\*
- 57. Registry of Deeds and Wills in Ireland.
- 58. Licensing of Alehouses in Scotland.
- 62. Regulating Linen and Hemp Manufacture in Ireland.
- 63. Regulating Appointment of Constables in Ireland.
- 64. Extending Power of Commissioners for the Regent's Park and New Street.
- 67. Providing Expense of disembodied Militia (annual).
- 70. Enlarging Power of Commissioners for the Westminster Improvements.
- 71. Empowering Deputy-Warden of Cinque Ports and Lieutenant of Dover-Castle to act for the Lord Warden.
- 72. East India Mutiny Act.
- 73. Act for the Relief of Insolvent Debtors in the East Indies till March 1, 1833.†
- 74. Improving the Administration of Criminal Justice in the East Indies.‡
- 75. Improving Holyhead and Liverpool Roads to London.
- 78. Extending 43 & 53 Geo. III. for the Sale of the Estates of Persons found Lunatic.
- 79. Repealing 3 Geo. IV. c. 51, for apportioning to Posterity the Burthen of Military and Naval Pensions and Civil Superannuations.
- 80. Enabling Bankers in Ireland to issue unstamped Promissory Notes, payable to Bearer on Demand, for not exceeding 100*l.*, on Payment of a Composition in lieu of Stamp Duties.§

\* The four last Acts are an extension to Ireland of the Criminal Statutes of Mr. Peel.

† This is an important statute to the inhabitants of Hindostan, by giving them the benefit of the Insolvent Laws of England.

‡ An incorporation into the criminal code of India of some of the alterations introduced by Mr. Peel's statutes.

§ Similar act to cap. 23 of last session for England, and which is abstracted, p. 8.

81. Making Promissory Notes issued by Bankers in Ireland payable at the Places where issued.
82. Provision for Lighting, Cleansing, and Watching Towns in Ireland.
83. For better Administration of Justice and Government of New South Wales and Van Dieman's Land.
84. Continuing an Act for amending and consolidating Laws for Abolition of Slave-Trade.
85. Remedying Defect in Titles of Land purchased for Charitable Purposes.
86. Amending Pilot-Act as affects Cinque Port Pilots.
87. Continuing for one Year 6 Geo. IV. respecting deserted Children in Ireland.
88. Amending Acts relating to Butter-Trade in Ireland.
89. For raising 16,046,800*l.* by Exchequer-Bills for the Service of 1828.
91. Authorizing an Advance out of Consolidated Fund for Completion of Welland Canal Navigation in Upper Canada.
94. Rendering valid Bonds for Resignation of Ecclesiastical Preferments in certain Cases.
95. An Act to appropriate the Supplies granted in the Session of 1828.

# IMPORTANT Law Cases,

FROM THE

COMMENCEMENT OF MICHAELMAS TERM, A.D. 1827.

The following abbreviations have been adopted and are those in general use for the Term Reports :

G. & J. Glynn & Jameson.  
B. & C. Barnewall & Cresswell.  
M. & P. Moore & Payne.

M. & R. Manning & Ryland.  
Y. & J. Younge & Jarvis.  
Moo. & Malk. Moody & Malkin.

**AGREEMENT.** It is agreed "that A. should give B. 100*l.* for a coach, by four bills of 25*l.* and that B. should have a claim upon the coach until the debt was duly paid;" which agreement was followed up by the mutual delivery of the coach and bills. The first bill was not paid when it became due. A. died; his administratrix sent the coach to B. for repair; B. detained it on the ground that the bill had not been paid: in an action of trover against B., it was held the agreement operated as a mere personal license from A. to B. untransferable, and that the coach having vested in the administratrix by operation of law, the defendant was not justified in the detention.—*Howes v. Ball*, 7 B. & C. 481.

**APPEAL.** An appeal from the Master of Rolls or Vice-Chancellor to the Lord Chancellor is only a rehearing; evidence may, therefore, be read which was not read at the original hearing.—2 *Russ.* 91.

**ARBITRATION.** Though a reference to arbitration is made under an order of court, either party may revoke the authority of the arbitrator before the award is made; but it is a contempt to do so.—*Haggett v. Welsh*, 1 *Sim.* 134.

**ATTORNEY.** A party who intrusts papers to an attorney

with an intimation to pay him if a certain property be recovered, is not liable for the costs of an action commenced and abandoned at the attorney's discretion.—*Tabram v. Horn*, 1 M. & R. 228.

2. The property in deeds, copies, and drafts is in the client, not the attorney.—*Alison v. Rayner*, 7 B. & C. 528.

**AUCTION.** If the owner of an estate put up for sale by auction employ a person to bid for him, the sale is void, though only one such person be employed, and though he is only to bid up to a certain sum, unless it be announced there is a person bidding for the owner.—*Wheeler v. Collin*, Moo. & Malk. 123.

2. A sale by auction by assignees of the absolute interest in estate in fee, which is in mortgage, is not liable to the auction-duty.—*Rex v. Winstanley*, Y. & J. 124.

**BANKRUPT.** A bankrupt is not entitled to his allowance unless a sufficient dividend be paid both on the joint and separate estate, 2 G. & J. 281; nor until his certificate has been confirmed by the Lord Chancellor.—*Ex parte Pavey*, March, 1823.

2. Where a bankrupt lost 40*l.* on a wager, though he on the same day won more than that sum, the certificate was stopt on petition.—2 G. & J. 329.

**BILL OF EXCHANGE.** By the custom of merchants the acceptor of a bill of exchange may refuse payment, unless the holder produce and deliver up the bill.—*Hansard v. Robinson*, 7 B. & C. 90.

2. Under 3 & 4 Ann, c. 9, a foreign note is negotiable in England by endorsement.—*Moo. & Malk.* 66.

3. An instrument drawn so equivocally as to render it uncertain whether it be a bill or promissory note, may be treated as either against the drawer by the holder.—*Edis v. Bury*, 1 B. & C. 433.

4. Where the drawer of a bill draws upon *himself* it may be deemed a promissory note and the drawer is not entitled to notice of non-acceptance. The similarity of name and residence is evidence sufficient to warrant the jury in supposing the drawer and drawee to be the same person.—*Roach v. Ostler*, M. T. 1827.

**BREWER.** A brewer who supplies beer to a public



house cannot charge any person as a primary debtor, but the person licensed to keep the house : and if beer be so supplied on the credit of a person not licensed, the brewer cannot recover against such person on the ground that it is a fraud on the excise.—*Meux v. Humphries*, 3 C. & P. 79.

**BRITISH MUSEUM.** A work published in parts, at intervals of several years, and to which were 26 subscribers, and only 30 copies printed at an expense exceeding the sum to be obtained by the price of the copies, and which expense was defrayed by a testamentary donation, is not a book demandable by the British Museum, under 54 Geo. III. c. 156.—4 *Ring*. 540, *H. T.* 1828.

**BROKER.** A ship-broker is not within the various acts for the admission and regulation of brokers.—*Gibbons v. Bull*, 4 *Bing*. 301.

**BULL-BAITING.** Bulls not being included in 3 Geo. IV. c. 71, for preventing cruelty to cattle, bull-baiting is not punishable under that statute.—3 C. & P. 225.

**CHARITABLE USE.** When trustees of a charity, under an instrument of doubtful construction, have acted honestly, though erroneously, they will not be charged with past misapplication of the funds. A court of equity is strict with the trustees when there is wilful misapplication ; but not when there is only mistake. And it is reluctant to compel a corporation to make a disclosure of property applicable to general corporate purposes.—*Attorney General v. Corporation of Exeter*, 3 *Russ*. 45.

2. It is not a general rule of equity that a charitable gift for the benefit of the poor is to be confined to such poor as do not receive relief from the poor rates.—*Same case*.

**CONSTABLE.** A constable having reasonable cause to suspect that a felony has been committed, is justified in arresting the party suspected, though it afterwards appear no felony has been committed.—*Beckwith v. Philby*, 6 B. & C. 635.

**CORPORATION.** If, in a charter of incorporation, power is given by a clause, which enumerates the constituent parts of the corporate body, a concurrence of a majority

of each part is requisite ; as for instance, when given to the mayor, aldermen, and capital burgesses. But it is otherwise when given to the corporation collectively, and no distinction made between the different classes of which it consists.—*Rex v. Headley*, 7 B. & C. 496.

**EATING-HOUSE-KEEPERS.** An eating-house-keeper appealed against a conviction for retailing beer without a license ; when it appeared the appellant's son was in the habit of supplying his father's customers with beer as they demanded it, from a neighbouring public-house, from the landlord of which he was allowed a halfpenny per pot for the quantity so disposed of ; and the question was, whether or not the beer so supplied by the son to the customers was to be considered as having been sold in the house. The court decided, that this was a retailing of beer in an unlicensed house, and confirmed the conviction.—*Bachelor v. A Conviction of H. M. Dyer, Esq. Middlesex Sessions, October 20th, 1827.*

**ENGRAVINGS.** A jury decided that there existed a general practice among engravers of reserving eight copies of every engraving for their use and benefit ; for the plaintiff that the engraver had no right to retain any number of copies for sale.—*Murray v. Assignees of Heath, M. T. 1827.*

**EVIDENCE.** Payment of interest is evidence of the principal sum being due, in reference to which the interest is paid.—*Sutton v. Toomer*, 1 M. & R. 125.

2. A note given for a deposit may be read as evidence of the terms of the deposit, though void under the stamp acts.—*Ibid.*

3. A woman living with a person as his mistress is disqualified from giving evidence in favour of the person under whose protection she has lived.—*Common Pleas, October 12, 1827.*

4. A person having deposited money in the hands of another, received from him the following memorandum : “ Mr. T. has left in my hands 200*l* ” In an action to recover that money, it was held that the memorandum was admissible in evidence without a stamp.—*Tomkins v. Ashley*, 6 B. & C. 543.

5. Strips of waste on the sides of a highway are pre-

sumed to belong to the owner of the adjoining close. Where such owner is a copyholder, the presumption is that they are part of his tenement.—*Pring v. Pearsey*, 7 B. & C. 304.

**FACTOR.** If a broker pledge the goods of his principal to one that has notice of the agency, the pawnee can acquire no more right, title, or interest, under 6 Geo. IV. c. 94 s. 5, than the broker possessed at the time of the transfer. Therefore, where the right of the broker was merely to an indemnity against bills accepted on security of the goods, it was held that the principal having satisfied these bills, was entitled to the goods without paying the pawnee the sum for which they were pledged to him.—*Fletcher v. Heath*, 7 B. & C. 517.

**FALSE IMPRISONMENT.** A magistrate is liable to an action of trespass and false imprisonment, for ordering a constable to take out of the room a person accused of maliciously hurting the dog of another, and bring him back again if the parties could not settle the matter, that he might proceed to commit him, the matter being settled and no conviction taking place.—*Budget v. Coney*, 1 M. & R. 211.

**FERRY.** For the purpose of embarking and disembarking his passengers, the owner of a ferry must have a right to use the land on both sides the water; but he need not have any property in the soil on the other side.—6 B. & C. 703.

**FIRE.** A stack of chimneys belonging to a house close to a highway, which, by reason of a fire was in immediate danger of falling on the highway, was thrown down by some firemen; it was held they were justified in so doing, and were not answerable for damage unavoidable done to the house of a third person.—*Moo. & Malk*. 56. February, 1827.\*

**FILLING-UP CHECKS.** A customer of a banker delivered to his wife certain printed checks, signed by himself, but with blanks for the sums, requesting his wife to fill the blanks up according to the exigencies of his

\* This and one or two more cases, it will be seen, were decided in the terms preceding Michaelmas, 1827.

**business.** She filled one up with the words fifty pounds, two shillings; the fifty being commenced with a small letter, and being placed in the middle of a line; the figures of £50 and 2s. were also placed at a considerable distance from the printed £; in this state she delivered the check to her husband's clerk, to receive the amount; whereupon he inserted at the beginning of the line in which the word fifty was written, the words three hundred, and the figure 3 between the £ and the 50. The banker having paid the £350 : 2s. it was held that the loss must fall on the customer.—*Young v. Grote*, 7 *Property Lawyer*, 464.

**GROUSE.** The right of warren ought not to be extended by inference to animals not clearly within it. Hence it was held that *grouse* are not birds of warren.—*Duke of Devonshire v. Lodge*, 7 *B. & C.* 36.

**HUSBAND AND WIFE.** Every child born in wedlock, the husband and wife being in England, and not separated by any sentence of divorce, is presumed to be legitimate, and the presumption of non-intercourse can only be admitted on irresistible evidence, not by a mere balance of probabilities. If an intercourse takes place, the adultery of the wife is immaterial, and the law presumes an intercourse, unless the contrary is demonstratively proved —*Morris v. Davies*, 3 *C. & P.* 215.

2. If a woman execute a settlement in contemplation of marriage, and conceal it from her intended husband, it is void against his marital rights, and the greater or less interval between the date of the instrument and that of the marriage, though a material circumstance, does not alter the principle.—*Goddard v. Snow*, 1 *Russ.* 485.

**INNKEEPER.** A traveller stopped at an inn in Nottingham, and directed part of his baggage to be placed in a certain room therein; the innkeeper's servant made no objection, but placed it there, when it was afterwards stolen. The Chief Baron, at the assizes, held that the case of an innkeeper was analogous to that of a carrier, and if he will limit his responsibility, he must give a *special notice* that he will not be liable if the baggage be disposed in any particular place or manner. On a motion for a new trial, the Court of King's Bench

concurring with this opinion.—*Richmond v. Smith*, *Law Magazine*, 147, *E. T.* 1828.

**IN FORMA PAUPERIS.** A suit in formâ pauperis may be instituted in the ecclesiastical courts.—1 *Hagg.* 81.

**JURORS.** A gentleman having a house at London and Brighton, and who had resided the last ten months at Brighton, was fined for not attending as special juror at the Common Pleas, Westminster.—*Ex parte Sir T. Clarges*, 1 *Y. & J.* 399. But where the party summoned had let the house, and was abroad, which fact was communicated to the summoning officer, the court remitted the fine. So likewise where the summons had by mistake been left at the wrong house.—*Ibid.* 401.

**LANDLORD AND TENANT.** It seems that in equity as well as in law, a tenant who covenants to pay rent during the whole continuance of his lease, is not, in the case of an accident by fire, entitled to a suspension of the rent during such time as is occupied in rebuilding the premises.—*Leeds v. Cheesham*, 1 *Sim.* 146.

2. A notice to quit served on a servant of the tenant's dwelling-house is sufficient, though the tenant be not informed of it until within half a year of its expiration.—*Moo. & Malk.* 10.

**LIBEL.** A fair criticism on the works of a professional artist, in the course of his professional employment, is not actionable, however mistaken it may be; if it is unfair and intemperate, and written for the purpose of injuring the party criticised, it is actionable.—*Soane v. Knight*, *Moo. & Malk.* 74.

2. In *Beaumont v. Thwaites*, Chief Justice Abbott held that the publishing of matter reflecting upon the character of an individual cannot be justified by the fact that such matter was a correct and impartial copy of a parliamentary report.—*Court of K. B. November 1, 1827.*

**MARRIAGE-SETTLEMENT.** Where after marriage the husband of a woman entitled to a fund in a cause agreed in writing to settle half his wife's fortune upon her, it was held that the agreement availed to the benefit of the children, and that therefore the wife could not waive it. *Fenner v. Taylor*, 1 *Sim.* 169.

2. A father, after having expressed an intention of making a larger provision for his younger children than he had before done, dies without having executed the intention; the son and heir-at-law, apprised of his father's intention, enters into a correspondence, in which he states a resolution on his part to make a further provision for the younger members of the family. His sister's allowance being 4000*l.* she marries on the strength of the correspondence, and it was held a good marriage-settlement, and that the son was bound to pay the 4000*l.*—*Montgomery v. Reilley*, 1 *Dow*. 62.

**MANSLAUGHTER.** Causing the death of a child by giving it spirituous liquors in a quantity unfit for its tender age is manslaughter.—*Rex v. Martin*, 3 *C. & P.* 210.

**OVERSEER.** An overseer has not by virtue of his office any authority to borrow money.—*Leigh v. Taylor*, 7 *B. & C.* 491.

**PARENT AND CHILD.** If a person know that his natural daughter, aged 16, is boarded and clothed by the plaintiff, and neither expressed dissent nor takes his daughter away, he is liable for such board and clothing without any promise so to do.—*Nicholl v. Allen*, 3 *C. & P.* 36.

2. If proper clothes are supplied to an infant by his father, any others furnished in addition cannot be considered as necessaries, and it is the duty of a tradesman when applied to by an infant for clothes to make inquiry of his friends before he gives him credit.—*Cook v. Deaton*, 3 *C. & P.* 114.

3. The Court of Chancery has jurisdiction to control the legal rights of a father over his children on the ground of his *immoral* conduct.—*Wellesley v. Duke of Beaufort*, 2 *Russ.* 1.

**PARTNERSHIP.** A partner having a right to appoint a person to succeed on his death to his share of the business, the refusal of the appointee to enter the firm on the same terms on which he was a partner dissolves the partnership, but the dissolution is not wrought by the exclusion of the appointee.—*Kershaw v. Matthews*, 2 *Russ.* 62.

2. A party paying a deposit on shares in a trading-  
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company, and afterwards signing the deed of partnership, is to be considered a partner from the time of his paying the deposit.—*Moo. & Malk.* 93. But though a person purchase certain parchments, purporting to be share-tickets in a mine, and conceives himself to be a shareholder; yet, if it appear that the parchments give no *legal interest* in the mine, such person is not liable for goods furnished for the working of the mine, unless furnished on his personal credit.—*Vico v. Vicountess Anson*, 3 C. & P. 19.

3. If one of several partners be concerned in preparing the prospectus of a projected newspaper, which prospectus states, that he and others will act as treasurer and manager, and also that the subscribers to share in the paper are not to be partners, nor to be answerable for more than their subscription, and to be also aware that a single individual is to be sole proprietor; the firm of which such partner is a member (though he has not taken any share in the paper) cannot sue the subscribers who have taken shares for the price of goods furnished for the paper.—*Batty v. M'Cundie*, 7 *Property Lawyer*, 479.

PEW IN CHURCH. Pews in a church belonging to the parish, for the use of the inhabitants, cannot be sold or let, without a special act of parliament. The occupier of a pew ceasing to be an inhabitant of the parish, cannot let the pew with and thus annexed to his house, but it reverts to the disposal of the churchwardens. The churchwardens may exercise a just discretion in the allotment of pews, subject to the correction of the ordinary.—*Wyllie v. Mott*, 1 *Hagg.* 28.

2. A pew in the body of a church may be prescribed for as appurtenant to a house out of the parish.—*Lousley v. Hayward*, 1 Y. & J. 583.

POOR RATE. A canal company is liable to be rated in respect of the land that they occupy in every parish through which the canal passes, and for that value which the land there produces. Thus, if the traffic on the canal is greater in one part than another, the rate in that parish will be proportionately greater.—*King v. Inhabitants of Kingswinford*, 7 B & C. 236

2. A parish cannot legally be divided for the relief and maintenance of the poor, unless it cannot otherwise have the full benefit of 43 Eliz. c. 2, 6 B. & C. 496.

3. If only one of several partners be resident in a parish, he cannot be rated to the poor in a greater ratio than his share of the partnership's personal property.—*Rex v. Gosse*, T. T. 1827.

POLICE. The London Police Act, 3 Geo. IV. c. 55, s. 16, authorizes to apprehend not only on suspicion of felony, but persons of general bad character, as rogues and vagabonds.—*Moo. & Malk.* 37.

PRIVILEGE. An Irish peer, who has voted in the election of representative peers, cannot be arrested or sued by capias.—*Coates v. Lord Hawarden*, 1 M. & R. 110.

PROMISE. An auctioneer employed to sell goods on certain premises, for which rent was in arrear, was applied to by the landlord for the rent; the landlord saying it was better to apply so than distrain. The auctioneer answered, "You shall be paid, my clerk shall bring you the money." It was held an action lay on this promise, without a note in writing.—*Bampton v. Poulin*, 4 Bing. 264.

RENT. A net-rent is a sum to be paid to the landlord, clear of all deductions for rates or taxes.—3 C. & P. 96. M. T. 1827.

SEAMENS' WAGES. If a seaman's claim for wages is resisted on the ground that he would not do his work, which by the ship's articles is to cause a forfeiture of wages, it is a good answer to the defence to show that the refusal to work was caused by the misconduct of the captain, which went to induce the men to incur such forfeiture.—*Sentowe v. Poole*, 3 C. & P. 1.

2. The ship's articles of a South Sea whaler, provided the seamen serving on board should lose their wages if they did not return with the ship to London. Some part of the seamen, after serving 27 months, were, with the consent of the captain, exchanged into another ship, for others belonging to that ship; in this case it was held, if the seamen lost their wages under the articles, they could recover a reasonable compensation for their ser-



vices on the count for work and labour done.—*Hillyard v. Mount*, 3 C. & P. 93.

**SEDUCTION.** A married woman is competent to enter into an engagement of service, defeasible only by her husband; and a father may maintain an action for the seduction of his married daughter, serving in his family apart from her husband.—*Harper v. Luffkin*, 1 M. & R. 166.

**SERVICE OF WRIT.** It seems that a writ intended for the father, served upon the son, who answers to the name of the father, that being his own name also, is sufficiently served, if it come into the hands of the father before its return.—*Godefrey v. Joy*, 3 C. & P. 193.

**SETTLEMENT.** No settlement is gained upon a tenement of 10*l.* a year, nor any higher amount of rent, unless the rent for one whole year be actually paid.—*6 B. & C. 712.*

2. The fact of a pauper remembering himself when four years' of age, in a parish, is no evidence that he was born there; neither is the fact of a child being first found in a parish, or of being occasionally relieved there, conclusive evidence of place of settlement. In general, it seems, that relief given to a pauper is no evidence of his being settled in the relieving parish.—*Rex v. Inhabitants of Trowbridge*, 7 B. & C. 252.

3. A man marrying a woman who is tenant from year to year of premises under the value of 10*l.* gains a settlement by 40 days' residence, whether her interest came to her as executrix or otherwise.—*7 B. & C. 233.*

4. A general hiring, with a stipulation that the servant might leave on giving a month's notice, and might be dismissed at pleasure, is a yearly hiring, sufficient to confer a settlement, and it matters not though the hiring was by a public establishment, as a Royal Military College, exempt from poor-rate.—*Rex v. Inhabitants of Sandhurst*, 1 M. & R. 95.

5. The wife and children of an Irishman, who has no settlement in England, and absconds, leaving them chargeable, must be removed to the place of the wife's last legal settlement, and cannot be passed to Ireland,

under 59 Geo. III. c. 12.—*Rex v. Cottingham*, 1 M. & R. 439.

6. The taking of a tenement at 20 guineas a year, the rent to be paid weekly, but either party to be at liberty to give three months' notice from any quarter-day, is a yearly hiring, according to 6 Geo. IV. c. 57, and gives a settlement.—1 M. & R. 427.

7. A contract of hiring and service for a year, made between a farmer and labourer on *Sunday*, is not within the prohibition in 29 Car. II. c. 7, and service under it confers a settlement.—*Rex v. Whitmarsh*, 1827.

SEWERS. The jury who are summoned by the sheriff to make the presentment before the commissioners of sewers, should come from the *body of the county*, and not from the district over which the commissioners have jurisdiction.—3 C. & P. 63.

SLAVE TRADE. A point of great importance to West India planters was decided on appeal in the Court of Admiralty, before Lord Stowell, November 6th, 1827. The facts of the case were these:—A slave, named Grace, was brought by her master to this country, from the island of Antigua, and having remained here for some time, returned voluntarily with him to that island, where he insisted on her *continuing in a state of slavery*. She was subsequently seized by the government officers there, as enfranchised, inasmuch as having once touched the British coast, she was thenceforward ever free. An action was brought by the owner, for restitution, in the court abroad, and decided in his favour, and against this decision the appeal was made. His Lordship, in giving judgment adverted principally to the similar case of Somerset, wherein Lord Mansfield decided that a slave once setting foot on British land, was for ever free. Lord Stowell's opinion went to confirm this decision as regarded this country. But those who contended that Grace should be free were, he thought, bound to show it had been customary, in the absence of any law on the subject, that when slaves who had come to England *returned* to the West Indies, they had been set free there. This they had not done, and he was bound to consider that they could not. His Lordship's opinion, therefore,

was, that the appeal should be dismissed with costs ; and the judgment of the court below confirmed.

**STAMP DUTIES.** A mere acknowledgment of a deposit, if it contains no other contract than that which the law implies, does not require any stamp.—*Langdon v. Wilson*, 8 P. Lawyer, 400.

2. A lessee who executes the counterpart of a lease, cannot dispute its admissibility in evidence, or impeach its validity upon the ground of the original not being properly stamped.—*Paul v. Meek*, 2 Y. & J. 116.

3. An agreement in which it is stipulated that one party shall pay the other a fixed salary, and the other agreed not to set up a chemist's shop within a certain distance, the parties being mutually bound in a penalty of 600*l.* to perform the agreement, such agreement was held to require a stamp of 1*l.* 15*s.*—*Mounsey v. Stephenson*, 7 B. & C. 403.

**STRANDING.** Stranding is where a ship by an accident and out of the ordinary course of her voyage gets upon the ground or strand, and receives injury in consequence. Negligence of the crew does not discharge the underwriter if the loss is occasioned by one of the perils insured against.—*Bishop v. Pentland*, 1 M. & R. 49.

**SUNDAY.** The statutes 3 Car. I. c. 1, and 29 Car. II. c. 7, do not make the travelling of stage-coaches on the Lord's Day illegal.—*Sandeman v. Breach*, 7 B. & C. 96.

**TREES.** If a tree grows near the boundary of the land of two persons, so that the roots extend under the soil of each, the property in the tree belongs to the owner of the land in which the tree was first sown or planted.—*Holder v. Coats*, *Moo. & Malk.* 112.

**TRESPASS.** A wilful trespass on another's property without doing any real damage is not sufficient to justify the apprehension of the trespasser under 1 Geo. IV. c. 5, s. 3.—*Butter v. Tubley*, *Moo. & Malk.* 54.

2. If a person who keeps hounds and a hunting-establishment receives notice not to trespass on the lands of another, and after this his hounds go out, followed by a number of gentlemen, who go upon the

lands, in this case the *owner* of the hounds is answerable for all the damage they do, though he himself forbear to go on the lands, unless he distinctly desires the gentlemen who take out his hounds not to go on these lands.—*Baker v. Berkeley*, 3 C. & P. 32.

3. In the same case it was decided that if a stag, hunted by the hounds of B. run into the barn of A., B. and his servants have no right to enter the barn to take his stag; if they do so, they are trespassers.

**TURNPIKE.** Trustees of a turnpike-road are not liable in damages for an injury occasioned by the negligence of the contractors, or others employed under them, in the performance of public works on the road, unless they *personally* interfere in the management of the works.—*Humphreys v. Mears*, 1 M. & R. 187.

2. Under the general Turnpike Act, 3 Geo. IV. c. 126, s. 86, authorizing the trustees, after the completion of a new road, to stop up the old one, unless leading to some church, mill, village, or place, lands or tenements, to which the new road does not immediately lead; it was held the trustees have a discretionary power of stopping up the old road even in the excepted cases.—*De Beauvoir v. Welch*, 1 M. & R. 81.

**USURY.** An agreement for the payment of the purchase-money of an estate by instalments, with interest beyond the legal rate, is not usurious, if the stipulated sum for interest is in fact part of the purchase-money.—*Beete v. Bidgood*, 1 M. & R. 143.

**VICIOUS ANIMALS.** It seems that the owner of a vicious animal, after notice of its having done an injury is bound to secure it at all events, and is liable for damages to a party subsequently injured, if the mode he has adopted to secure it proves to be insufficient. Thus, in an action for injury by a vicious bull, the plaintiff recovered, though it appeared the bull was attracted by the cow in a particular state, which the plaintiff was driving past the field where the bull was, and that the plaintiff first struck the bull to drive him away from the cow.—*Blackman v. Simmons*, 3 C. & P. 138.

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though his harpoon be detached from the line when the second striker strikes, if the fish be so entangled in his line that he might probably have secured it without the interference of the second striker.—*Moo. & Malk.* 58. If, while the fish is fast to the harpoon of the first striker, another comes up unsolicited and disturbs the fish, so that she breaks from the first harpoon, and then he strikes her with a harpoon himself, and secures her, the fish continues the property of the first striker.—*Skinner v. Chapman*, *Ib.* 69.

**WHARF.** Natural ground on the banks of a canal, though used for the purpose of a wharf, is not a wharf, which, in its ordinary sense, means something built or constructed for the purpose of loading and unloading goods; or, at all events, something for which wharfage or compensation is paid to the owner for the use of it as a landing-place. The sea-beach is not a wharf.—*Rex v. Regent's Canal*, 7 *Property Lawyer*, 392.

**WILL.** The word "property" in a will is sufficient to pass the real estate, unless there be other expressions to show that it was used in a more restricted sense.—6 *B. & C.* 412.

2. Interest is payable from the testator's death on a legacy to a natural child, with directions to apply a competent part of the interest for its maintenance.—3 *Swanst.* 689.

3. The delivery, in contemplation of death, to a daughter of a bond and mortgage security for the payment of money is a good *donatio mortis causâ*, and the heir or executor is bound to give effect to the intent of the donor.—*Duffield v. Hicks*, 1 *Dow. N. S.* 1.

4. Where an undue influence is exercised over the mind of a testator in making his will, the provisions in the will in favour of the person exercising that influence are void; but the will may be good so far as respects other parties; so that a will may be valid as to some parts and invalid as to others; may be good as to one person and bad as to another.—*Trimbeston v. D'Alton*, 1 *Dow. N. S.* 85.

5. The *primâ facie* presumption is that pencil-marks are deliberative, and those in ink final; when they are of

both kinds in the same instrument the presumption is strengthened.—1 *Hagg.* 321.

6. Probate may be granted in common form of a will, written entirely in pencil by the deceased, who a few days before her death declared she wished it to operate unless altered.—1 *Hagg.* 219, *H. T.* 1828.

7. The widow having, after the testator's death, caused his will to be destroyed, probate of the ~~draft~~ will be granted and the widow condemned in the whole costs of the suit.—*Martin v. Lakin*, 1 *Hagg.* 244.

8. In a devise of real estates, the witnesses retired and attested the will in an adjoining room, a wall only of which was visible from the bed in which the testator lay, so weak as to be incapable of moving without assistance. It did not appear in what part of the room the witnesses signed the will, but it was held duly attested, the jury finding it attested in such a place that the testator had the means of seeing what was done.—*Tedd v. Earl of Winchelsea*, *Moo. & Malk.* 12

\*.\* Besides the Term Reports, much assistance has been derived in preparing the preceding digest of popular law cases for the last twelve months from several other legal periodicals, especially the *Property Lawyer*, the *Annual Law Digest*, and the *Law Magazine*.

*Erratum.*—The 7 and 8 Geo. IV. c. 21, s. 12, mentioned p. 543 of *The Cabinet Lawyer*, applies only to newspapers for which a duty of postage is chargeable.



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